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# PROSECUTION IN FALSE CASES

BY

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"Confessions and the Evidence of Accomplices."*

WITH A FOREWORD

BY

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## FOREWORD.

A book on a branch of Criminal Law from the pen of a veteran criminal lawyer, such as the author is, is bound to be a work of great merit, and so is this treatise on Prosecution in False Cases. It deals with a subject of which a systematic study, on a scientific or logical basis in the light of fundamental principles and of case-law, is seldom made. But the importance of the subject is well-recognised by lawyers as well as by administrators of law. It is a subject as regards which students as well as junior practitioners very often feel a sense of having lost their bearings amidst the meshes which judicial decisions have woven round the statutory enactments. The book purports to deal with the subject in an attractive and useful form, helping one to keep in view the main principles, and endeavouring to explain them with the help of decided cases and other illustrations. Every attempt has been made to reconcile decisions which may on the face of them appear to be in conflict, and, where that is not possible, the author has given his own considered and weighty opinion as to what should be the right decision.

The book will enable its reader to get a grasp of the salient features of this branch of the law ; and, no decision of any importance having been omitted, it is hoped to be useful alike to the Bench and the Bar.

Calcutta. }  
July 26th, 1932. }

(Sd.) MANMATHA NATH MUKERJEE.



## **. . PREFACE.**

1. The subject of prosecution in false cases presents some interesting peculiarities of its own. In the first place, it will be noticed that there are two main sections in the Indian Penal Code, *viz.*, section 182 and section 211, which deal with offences arising out of false accusations. These sections overlap each other in some respects but they differ in other, and the first question that arises in a prosecution of this nature is which of the two sections should be applied to the facts of the particular case.

2. Then secondly, as the above question is answered, the procedure for the trial shall have to be ascertained, for the procedure for prosecuting a case under section 182 is not the same as that in the other case.

3. The procedure as noticed in the book, however, is not the same in the different Provinces of India. It is to be gathered not from the Code alone but to a certain extent from case law.

4. Prosecution in false cases often fails for not properly applying the substantive law on the subject and for not observing the proper procedure in initiating the prosecution. The author has attempted to place the law on the subject in a clear form before the readers. He has tried to be careful in noticing the different views of the High Courts on the question of procedure and has quoted at length the reasons given for them by each, so that they may be well understood. There are conflicting rulings on many points which are difficult, if not impossible, to reconcile. In some cases the author has ventured to differ from the views expressed by the Hon'ble High Courts, and he has given his reasons for so differing. He has devoted some pages in Chapter XI of this book on *naraji* petitions, *i.e.*, the petitions impugning the correctness of the police report and praying for a judicial inquiry of the complaint, and has discussed the effect of the change in sec-

tion 173 of the Code of Criminal Procedure made by the Act XVIII of 1923.

5. The book is divided into two Parts and sub-divided into Chapters as will appear from the Table of Contents.

6. The author ventures to think that although Chapters have been written with reference to sections 182 and 211 I. P. C., they may be read not unprofitably in connection with cases under other sections mentioned in section 195 of the Code of Criminal Procedure ; for, the reasons equally apply to such cases.

7. Case law on the subject has been brought up-to-date.

8. Although this work is primarily intended for Police Officers, the author hopes that Judicial Officers and Legal Practitioners may also consult it with some advantage.

9. In order that the rulings of the High Courts may well be understood, the facts of the cases and the reasoning of the decisions have been quoted at length, so as to obviate the necessity of consulting the original reports. The important passages have been italicized and marginal notes have been given to indicate the substance of the subject.

10. Paragraphs have been numbered in order to facilitate cross-references.

11. No pains have been spared to make the book useful. Any suggestion regarding the subject will be wel-come to the author.

12. The author acknowledges with thanks and pleasure the help which he received from his cousin Babu Rames Chandra Mazumder, M.A., B.L., Pleader, Pabna, and his sons Babu Jnancudra Narayan Choudhuri, M.A., B.L., Pleader, Dacca, Babu Satis Narayan Choudhuri, Pleader, Pabna, and Babu Paresh Narayan Choudhuri, B.L., Pleader, Pabna. Without their help the book could not be published in the present form.

at PABNA,  
The 15th August, 1932.

P. N. C.

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## EXPLANATION OF SOME OF THE ABBREVIATIONS

All.	..	..	..	Allahabad High Court.
A.I.R.	..	..	..	Ail India Reporter.
A.L.J.	..	..	..	Allahabad Law Journal.
A.W.N.	..	..	..	Allahabad Weekly Notes.
Beng. L.R.	..	..	..	Bengal Law Reports.
Bom.	..	..	..	Bombay.
B.L.R.	..	..	..	Bengal Law Reports.
Bom. H.C.R.	..	..	..	Bombay High Court Reports.
Bom. L.R.	..	..	..	Bombay Law Reporter.
Cal.	..	..	..	Calcutta.
Cr. Cases	..	..	..	Criminal Cases.
Cr. P.C.	..	..	..	Criminal Procedure Code.
C.L.J.	..	..	..	Calcutta Law Journal.
Cr. L.J.	..	..	..	Criminal Law Journal.
C.L.R.	..	..	..	Calcutta Law Reports.
C.W.N.	..	..	..	Calcutta Weekly Notes.
I.C.	..	..	..	Indian Cases.
I.L.R. All.	..	..	..	Indian Law Reports Allahabad Series.
I.L.R. Bom.	..	..	..	Indian Law Reports Bombay Series.
I.L.R. Cal.	..	..	..	Indian Law Reports Calcutta Series.
I.L.R. Lah.	..	..	..	Indian Law Reports Lahore Series.
I.L.R. Mad.	..	..	..	Indian Law Reports Madras Series.
I.L.R. Pat.	..	..	..	Indian Law Reports Patna Series.
I.L.R. Rang.	..	..	..	Indian Law Reports Rangoon Series.
I.P.C.	..	..	..	Indian Penal Code.
Lah.	..	..	..	Lahore.
Lah. L.J.	..	..	..	Lahore Law Journal.
Low. Bur. Rep.	..	..	..	Lower Burma Reports.
L.J.Q.B.	..	..	..	Law Journal Queen Bench.
Mad.	..	..	..	Madras.
M.L.J.	..	..	..	Madras Law Journal.
M.L.T.	..	..	..	Madras Law Times.
M.W.N.	..	..	..	Madras Weekly Notes.



Nag.	..	..	..	Nagpur.
N.W.P., H.C.R.	..	..	..	North-West Provinces High Court Reports.
Pat.	..	..	..	Patna.
P.L.J.	..	..	..	Patna Law Journal.
P.L.T.	..	..	..	Patna Law Times.
P.L.R.	..	..	..	Punjab Law Reporter.
P.R.	..	..	..	Punjab Records.
Punj.	..	..	..	Punjab.
P.W.R.	..	..	..	Punjab Weekly Reporter.
Rang.	..	..	..	Rangoon.
S.L.R.	..	..	..	Sind Law Reports.
U.B.R.	..	..	..	Upper Burma Reports.
Unrep. Cr. Cases, Bom.				Unreported Criminal Cases, Bombay.
W.R.	..	..	..	Weekly Reporter.
Weir	..	..	..	Weir's Madras High Court Criminal Rulings.

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## ADDENDA ET CORRIGENDA.

P.—Page ; l.—Line.

- P. 3, ¶¶ 4 and 5, marginal notes *for 117 read 177.*
- P. 5, l. 22, *for Dwarka Prassa read Dwarka Prasad.*
- P. 19, ¶ 29, marginal note, *for give read giving.*
- P. 20, l. 24, *for belong read belonged.*
- P. 25, l. 17, *for Biswqnath read Biswanath.*
- P. 41, l. 16, *add was after section.*
- P. 45, l. 17, *for ruling read rulings.*
- P. 57, ¶ 77, marginal note *for sec read sec.*
- P. 69, l. 9 *for 13 Bom. read 31 Bom.*
- P. 69, l. 27, *delete the first "and".*
- P. 71, at the end of the ¶ 95, *add,—In a very recent case, R. v. Jhori, (1931) 33 Cr.L.J. 256, the Allahabad High Court followed the Full Bench case of Karim Buksh, (1888) I.L.R. 17 Cal. 574. See p. 295.*
- P. 88, l. 23, *for aefind read defined.*
- P. 95, l. 7, *after (4) delete to*
- P. 98, l. 14, *for Prasad read Prosad.*
- P. 101, ¶ 128, in the beginning of the marginal note *add whether the.*
- P. 102, l. 34, *add the before public officer.*
- P. 104, l. 18, *for 212 read 111.*
- P. 109, l. 20, *add a before false.*
- P. 109, l. 28, *add and after case.*
- P. 110, l. 10, *for ccused read accused.*
- P. 110, *after ¶ 138, add,—The Madras High Court in the Full Bench case of R. v. Kodangi, (1930) 33 Cr.L.J. 479 : s.c. I.L.R. 55 Mad. 611, held that when a charge is made by the complainant to the Police against more than one individual, and the Police while charging before the Court one or more of such individuals of the offence complained of do not charge them all, the Court has no jurisdiction to take action under sec. 476, Cr.P.C., in respect of those not so charged.*

In this case the false complaint was in a telegram to the District Superintendent of Police charging four persons with stabbing another, but the Police investigated and charged only one of the four and the charge against others was not brought before the Court. It was held by the Full Bench that the mere fact of the telegram being exhibited and filed in the case did not make the contents of it a matter "in relation to the proceedings" in the Court so as to give the Court jurisdiction to the action under sec. 476 of the Criminal Procedure Code against the others.

P. 121, l. 31, *for* 1229 *read* 1929.

P. 134, *before* ¶ 174, *add*,—When an appeal was preferred relating to an offence of forest law to the Governor-in-Council and the appeal was heard by a member of the Executive Council who was in charge of the Forest Department, it was held in *R. v. Daulatram Mudi*, (1931) 36 C.W.N. 505, that the said member is not a "Court".

P. 135, ¶ 177, in the marginal note *for* *canno read* cannot.

P. 139, l. 4, *for* Cr.L.I. *read* Cr.I.J.

P. 142, l. 28, *for* *Mablon* *read* *Mahlon*.

P. 156, l. 22, *for* 2 *read* R.

P. 163, *delete* the head line,—“Commitment instead of complaint.”

P. 173, ¶ 253, in the marginal note *for* *evidencc* *read* *evidence*.

P. 180, l. 26, *for* *Syadkhan* *read* *Syedkhan*.

P. 189, in the head line *for* *consideration* *read* *considerations*.

P. 208, l. 23, *for* *Mhdcon* *read* *Mahadeo*.

P. 266, l. 15, *for* 180 *read* 130.

P. 290, ¶ 396, in the marginal note *for* *elegraphic* *read* *tele-graphic*.

P. 298, l. 12, *for* (c) *read* (a).

P. 299, ¶ 413, in the marginal note *for* *where* *read* *when*.

P. 300, l. 28, *for* ¶ 439 *read* 441.

P. 304, in the second marginal note *for* *suit* *read* *suits*.

# Prosecution In False Cases.

## PART I.

### CHAPTER I.

#### GENERAL REMARKS :

#### Distinction of Secs. 182 and 211 from Cognate Sections of the Indian Penal Code.

1. The detection of crime is made easier when people give information of actual facts and of their suspicions ; and under secs. 44 and 45 Cr. P. C., the giving of certain information in many matters of actual, intended or suspected crime, becomes an imperative duty, failure to perform which is punishable. (Per Jardine. J., in *Raghavendra v. Kashinath*, (1894) I. L. R. 19 Bom. 717, 723, 724). Thus it is not a wrongful act. for any person who honestly believes that he has reasonable and probable cause, to put the criminal law in motion against another or to give an information against another in the interest of the public. The law even excuses mistakes of facts in this respect, provided the belief in the truth of the allegation is *bona fide*. But if to the absence of reasonable and probable cause a malicious motive to annoy or to injure or to punish another is added, that which would have been a justifiable act, becomes culpable and the act becomes the more mischievous, because Courts or public servants are by such acts either hoaxed or sought to be converted into mere agencies of oppression. It is no doubt necessary in the public interest that people should be encouraged to give true informations but it serves no public interest to protect persons who without thought of consequences, set the

Honest informations encouraged.

False and malicious informations penal.



authorities in motion on random suspicions. (See the observation of Ranade, J., in the above-named case at p. 726).

It is with a view to discourage false and malicious informations that such false allegations, under certain conditions, have been penalised in the Indian Penal Code. See *post* ¶20.

2. It is obvious that when an allegation is made falsely before a public officer and the person accused <sup>Twofold effect of such informations.</sup> is wrongly punished or harassed thereby, not only the administration of justice suffers but the service of the Court or the public officer concerned, is also utilised for the purpose of satisfying private grudge and consequently contempt of the lawful authority of the public servant is shown. There are thus two main aspects of the effect of such allegations, *viz.*, one, affecting the administration of justice, and the other, affecting the public officer concerned. In order to provide against the two different results of such an accusation, two separate sections have been enacted in the Indian Penal Code :—

(a) sec. 182 dealing with the effect of a false accusation so far as it shows a contempt of the lawful authority of the public servant or the Court concerned; and

(b) sec. 211 dealing with matters so far as they affect the public administration of justice. In other words, the former section is aimed to protect the dignity of the public servant concerned and the latter to safeguard the proper administration of justice.

Section 182 is accordingly placed under Chapter X. of the Indian Penal Code which deals with contempt of the lawful authority of public servants, and section 211 occurs in Chapter XI. which deals, among others, with offences against public justice.

3. In *R. v. Hurtee Ram*, (1871) 3 N. W. P., H. C. R. 194, Turnbull, J., said, "The offence charged (sec. 182) is one of the offences described in Chapter X. of the Indian Penal Code

as 'offences against public servants' and the gist of it consists in the offender's intention, in giving the false information, to cause the public servant to whom he gives it 'to use the lawful power of such public servant to the injury or annoyance of any person.' The offence is the contempt of the lawful authority of the public servant, by moving him to use his authority wrongfully. It is against the public servant that it is committed, *and it is complete directly the false information is given, irrespectively of the results which may actually follow the action that may be taken upon it.*"

4. Chapter X. of the Indian Penal Code in which sec. 182 is placed, relates to several offences which denounce all disobedience to or contempt of the lawful authority of the public servants, or offences which obstruct them in the discharge of their duties. Both sections 177 and 182 I. P. C., provide for the punishment of persons who wilfully give false information to public servants. Sec. 177 I. P. C., is restricted, however, to informations on those subjects which a person is *bound* by law to inform. Further, in a case under sec. 177 I. P. C., it is not necessary to prove an intention to injure any person, or to prove an intention thereby to induce the public servant to do an act, or to omit to do it, as in sec. 182 I. P. C.

5. A false information to come under sec. 182 or 211 I. P. C., need not be made on oath. But where the false statement is made on oath, the offender is punishable under sec. 181 I. P. C., if he be legally bound by an oath to state the truth. Where in addition to the above obligation the statement is made on oath in the course of a judicial proceeding the offence is also punishable under sec. 193 I. P. C.

Where a person falsely reported to a Revenue Surveyor that his father had died, with a view to induce the Revenue Surveyor to enter his name in the Revenue Registers as owner of certain gardens and paddy

Secs. 177, 181, 182, and 193 I. P. C.

lands in succession to his father, it was held that the accused committed an offence under sec. 182 and not under secs. 177, 193 or 199 I. P. C. *Ismail v. R.*, (1914) 25 I. C. 515; s. c. 15 Cr. L. J. 603. (Low. Bur.).

6. In *R. v Phulel*, (1912) I. L. R. 35 All. 102, Phulel appeared before the District Magistrate and made a statement in which he accused a certain Police Officer of having beaten him, demanded a bribe of him and locked him up in the Police *hawalat*. He stated, however, that he did not wish to make a complaint, but only desired that an inquiry should be made. Nevertheless the Magistrate examined Phulel on oath, and subsequently, the charge having been found to be baseless, Phulel was convicted under secs. 182 and 193 I. P. C. The High Court held that the accused committed only one offence. He either committed an offence under sec. 182 or sec. 211 I. P. C. The conviction under sec. 193 was set aside on the ground that the Magistrate was not moved *qua* Magistrate, but only as a District head of the Police, and that it was unnecessary and perhaps unlawful for the Magistrate under those circumstances to have forced the man to take an oath.

7. A false information, when it harms the reputation of the person informed against, can as well be the subject of a charge of defamation. Indeed, if the information is given to one who is not a public servant, the only charge that may lie in such a case is one of defamation. The two offences are, however, different. Section 182 is an offence committed against a public servant and can only be prosecuted on the complaint of the public servant or of his superior officer concerned; whereas an offence punishable under sec. 500 I. P. C., is committed against the person defamed and can only be prosecuted on the complaint of the person aggrieved by the defamation. (See sec. 198 Cr. P. C.). Moreover, Exception 8 of sec. 499 I. P. C., provides that "it is not defamation to prefer in good faith an accusation against any

person to any of those who have lawful authority over that person with respect to the subject-matter of accusation." Where such good faith does not exist a charge for defamation can also lie for the statement so made. (See Chapter XVII).

8. A public servant may sometimes be deceived by false representation made to him against another person and may be intentionally induced to act against such person, the offence may look like <sup>False information and cheating.</sup> cheating the public servant. But the offence of cheating under the Penal Code is different from the one under sec. 182. There is no delivery of property in the last mentioned offence, nor any act or omission on the part of the public servant which directly causes any injury to him. In an offence of cheating, one of the above two ingredients is essential. (See sec. 415 I. P. C.).

B, an *Ahīr* was enlisted in the police force calling himself as Jat knowing that an *Ahīr's* enlistment was <sup>Sec. 182 and Sec. 415 I. P. C.</sup> prohibited, it was held that the offence of cheating by personation had not been committed and he might have been convicted under sec. 182 I. P. C. See *Buddha*, (1880) P. R. No. 14.

In an early Allahabad case (*R. v. Dwarka Prasad*) reported in (1883) I. L. R. 6 All 97, these principles were overlooked. There the accused had applied to the Farukhabad district Superintendent of Police to be enlisted in the Police of that district, and knowing that there was a rule which prohibited the enlistment of residents of that district into the Police of that district, but he falsely stated to the Superintendent that he was not a resident of the Farukhabad District. The Magistrate on these facts convicted him under secs. 177 and 182 I. P. C. On appeal, the Sessions Judge convicted him under sec. 415 I. P. C., holding that although the acts of the accused (appellant) did not constitute either of those offences, they did constitute the offence of attempting to cheat.

The High Court agreed with the Sessions Judge in holding

that the accused (appellant) did not commit the offence contemplated by secs. 177 or 182 I. P. C., but observed that the Session Judge was wrong in finding that the acts alleged against the convict constitute the offence of cheating as defined in sec. 415 I. P. C. The High Court is no doubt right in holding that no offence is committed under sec. 415 I. P. C.

There is no doubt that it was not an offence under secs. 177 or 415 I. P. C., as defined in the Indian Penal Code, as the accused was not bound by law to make any statement on the subject. But with due respects to the opinion of the learned Judges, it is submitted that the false statement as to his residence was a necessary step towards inducing the Police authority to do what the accused wanted to have done and hence it comes within the sec. 182 I. P. C.

In *R. v. Bala bin Kashaba*, (1895) Unrep. Cr. Cases, Bom., 761, *B* appeared before a Village Registrar under the Deccan Agriculturists Relief Act, 1879, and falsely personated *W*, and in such an assumed character, expressed a desire to execute a lease in favour of *A*, who was present and assented to take the lease. When *B* made some mistakes in giving the area of the land, *C* corrected him. *E* identified *B* as *W* before the Village Registrar and he and *D* assured the attesting witnesses that *B* was *W*, it was held that *C*, *D* and *E* committed an offence under sec. 182 I. P. C. See also the case of *R. v. Ganesh Khanderao*, (1889) I. L. R. 13 Bom. 506.

9. It will not be out of place to state here the difference between sec. 211 I. P. C., and the causing of wrongful confinement (sec. 340 I. P. C.), as a result of the false prosecution. In *Austin v. Dowling*, (1870) L. R. 5. C. P. 534, 540, Willes, J., observed, "The distinction between false imprisonment and malicious prosecution is well illustrated by the case, where, parties being before a Magistrate, one makes a charge against another, whereupon the Magistrate orders the person charged to be taken into custody and

False prosecution  
and malicious  
arrest.

Sec. 211 and Sec.  
340 I. P. C.

detained until the matter can be investigated. The party making the charge is not liable to an action for false imprisonment, because he does not set a ministerial officer in motion, but a judicial officer. The opinion and judgment of a judicial officer are interposed between the charge and the imprisonment. There is, therefore, at once a line drawn between the end of the imprisonment by the ministerial officer and the commencement of the proceedings before the judicial officer. It is fallacious to inquire whether or not the one is severable from the other, until you find some inseparable connection between them."

Having thus shown the distinction between the cognate sections of the Indian Penal Code, the subject indicated in the name of the book will be dealt with in the subsequent Chapters. The substantive law on the subject is dealt with in Part I of the book, and the procedure applicable to prosecution in false cases is discussed in Part II. (See Table of Contents).

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## CHAPTER II.

### THE SUBSTANTIVE LAW.

10. The substantive law on the prosecution in false cases is contained in secs. 182 and 211 of the Indian Penal Code which are reproduced below.

11. Section 182 I. P. C., lays down :—

**False information with intent to cause public servant to use his lawful power to the injury of another person.** "Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### *Illustrations.*

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will

make inquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

12. Sec. 211 I. P. C., lays down :—

“Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or <sup>**False charge of offence made with intent to injure.**</sup> falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

13. It is interesting to note here that sec. 211 did not appear in Lord Macaulay's Code and thus <sup>**History of sec. 211 I. P. C.**</sup> no adequate punishment was provided for preferring false charges. Probably it was thought that sec. 182 sufficiently provided for the offence. (*Vide* Indian Law Commissioners' Second Review, para • 102). The section was added by the Legislative Council and was placed under Chapter XL relating to false evidence and to offences against public justice, apparently with the intention to restrict it to criminal charges and to proceedings in Courts of justice.

14. For the distinctions of sec. 182 and sec. 211 I. P. C., see Chapter VI.



## CHAPTER III.

### NOTES AND COMMENTARIES ON SEC. 182 I. P. C.—ABETMENT.

#### A.—Notes and Commentaries on Sec. 182 I. P. C.

15. Section 182 of the Indian Penal Code as drafted by Lord Macaulay required that the false information shall cause the public servant to use his power to the loss or annoyance of some person. History of Sec. 182 I. P. C. The second clause (now the first clause) did not exist in the Draft Code but was added by the Legislative Council.

16. As enacted in Act XLV of 1860 the section stood thus :—

“Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

#### *Illustrations.*

(a) A informs a Magistrate that Z, a police officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

The above section was modified by sec. 1 of Act III of 1895, and the present section as quoted at page 8 was substituted in its place.

17. It will be observed that in the old section cl. (b) was placed before cl. (a), and that the two clauses were not prefixed with any distinguishing letters and that illustration (c) in the amended section did not occur in the old section.

18. The necessity for the change arose out of a conflict between the rulings in *Golam Ahmed Kazi*, (1887) I. L. R. 14 Cal. 314, and *R. v. Budh Sen*, (1891) I. L. R. 13 All. 351. Under the old section cl. (b) stood first and in that clause the words "injury or annoyance of any person" occurred; it was ruled by the High Court of Calcutta in the case of *Golam Ahmed Kazi* that the "section must be read as a whole, and, taken as a whole, \* \* \* it applies to those cases in which the Police are induced, upon the information supplied to them, to do or to omit to do something which might affect some third person, and which they would not have done if they had known the true state of things." Hence in the above case a person who lodged a false information to a Police Officer that he had been robbed in the street without indicating any particular person or describing any person in such a way as by any possibility could be supposed to implicate any one as the person who committed the robbery was held not to come under this section.

In the case of *R. v. Budh Sen*, (1891) I. L. R. 15 All. 351, the above case was dissented from. With regard to the ruling in I. L. R. 14 Cal. 314, Straight, J., observed thus:—"I regret that I cannot concur in the opinion so expressed. It appears to me to proceed, first, upon an erroneous apprehension of the scope and object of sec. 182 and the mischief at which it was aimed, that section appearing in the Chapter relating to "contempts of the lawful authority of public servants," and, secondly, upon an erroneous construction of the language of

the section itself. I cannot, having carefully examined the terms of the section, come to conclusion that it is essential for the public servant mentioned therein to have been induced to do anything or to 'omit to do anything.' It is sufficient if the party charged gave information which was false, with the intention of causing or knowing it likely that a public servant would be caused to exercise his lawful power or authority to the injury of an individual, or to do or omit to do something which he ought not to do or omit to do were the true state of facts known to him. In other words, the criminality contemplated by sec. 182 does not depend upon what is done or omitted to be done by the public servant on such false information, but what was, from the facts, the reasonable intention to be inferred on the part of the person who gave the false information. I also wish to remark that it seems to me that sec. 182 contemplates *two intentions* on the part of the person giving the

**Two intentions in  
sec. 182 I. P. C.**

false information : *first*, the intention to cause or the knowing it to be likely that he will thereby cause a public servant to use his lawful power to the injury or annoyance of *any person or persons*, and, *secondly*, the intention to cause or the knowing it to be likely that he will thereby cause such public servant to do or omit to do some act, which, if the true state of facts were known to him, he would not do or omit to do. \* \* \* \* It is immaterial, however, to consider the precise nature of the action of the Magistrate ; the question is, what action the persons who sent that telegram contemplated that the Magistrate would take ? \* \* \* \* It is absolutely indifferent whether by means of false information given with any of the intentions \* \* \* \* he is or is not induced to do or omit to do any act."

In the same case, Edge, C. J., observed, "It appears to me that the High Court at Calcutta in the case of *Gulam Ahmed Kazi*, (L. L. R. 14 Cal. 314) read sec. 182 of the Indian Penal Code as if no offence could be committed under that section unless the public servant referred to in it had been induced

by information supplied to him to do or omit to do something which might affect some third person, and which he would not have done or omitted to do had he known the true state of things. I entirely agree with my brother Straight that the question whether the public servant was induced to take action or to omit to take action is absolutely immaterial so far as this section is concerned. The offence is giving information which the informant knows or believes to be false and his intention thereby to cause or his believing or knowing it to be likely that he will thereby cause the public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which the said public servant ought not to do or omit if the true state of facts respecting which information is given were known by him."

It will thus appear that the Draft Code required some act to be done by the Police Officer. The Legislature provided a punishment for a person for merely misleading a public servant. The rulings interpreted the section to be comprehensive enough to include cases where the public servant was not even misled. See *Budh Sen's* case, *ante* ¶18.

Owing to this conflict of opinions the law was amended so as to show that the two clauses are not to be read together, and that the words "injury or annoyance of any person" occurring in the first clause might not be read in the second clause. This was done by altering the position of the clauses, and by prefixing separate letters before each clause and by adding an illustration (c) to the section.

19. The amendment thus overrules the view taken by the Calcutta High Court in *Golam Ahmed Kazi's* case (I. L. R. 14 Cal. 314) and also the views taken in *R. v. Pen'annan*, (1881) I. L. R. 4 Mad. 241, and *R. v. Suraji*, (1873) Unrep. Cr. Cases, Borth. 76, and affirms the views in *R. v. Hurree Ram*, (1871) 3 N. W. P., H. C. R. 194; and *R. v. Budh Sen*, (1891) I. L. R. 13 All. 351. As now worded, the giving of false information to a public

Effect of the change.

servant is penal provided that either of the two consequences mentioned in the section is intended or is known to be likely to be caused, it being immaterial as to what action, if any, was taken by the public servant consequent on such information.

20. The object of the section is that false and malicious informations must be discouraged. [Per Jardine, J., in *Raghavendra v. Kashinath*, (1894) I. L. R. 19 Bom. 717. 725]. In *R. v. Budh Sen*, (1891) I. L. R. 13 All. 351, 353, 355], Straight, J., observed that the kind of mischief at which the section is aimed is contempt of lawful authority. "Persons are not, by making reckless statements to a public servant, to bring the office of that public servant into contempt." In the same case, it was held by Edge, C. J., that "a public servant should not be falsely given information with the intent that he should be misled by a person who believed that information to be false and was intending to mislead him." See *ante* ¶ 1.

21. It is thus beyond the scope of the section to inquire whether or not the public servant concerned took any action upon the information, that is to say, whether he used his lawful power as such public servant to the injury or annoyance of any person. The offence is complete, directly the false information is given irrespective of the results which may actually follow the action that may be taken upon it. It is immaterial whether the public servant was induced actually to take action. See *R. v. Hurree Ram*, (1871) 3 N. W. P., H. C. R. 194; *R. v. Budh Sen*, (1891) I. L. R. 13 All. 351, *ante* ¶ 18.

**(a) Public servant when does not take any action on the information.**

**(b) When information is not against any particular person or persons.**

It is also immaterial whether the information was against any particular person or persons. (See *ante* ¶ 18). Under sec. 182 I. P. C., the giving of false information to a public servant is penal, when either of two consequences is intended to be caused, or is known to be likely to be caused, by the false information; the first,

(according to the section as amended by Act III of 1895) to cause the public servant "to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known to him;" the second, to cause the public servant "to use the lawful power of such public servant to the

(c) When the public servant acts though not to the injury of any person.

"injury or annoyance of any person;" and that to constitute an offence *under the first part of the section, it is not necessary to show that the act done would be to the injury or annoyance of any third person.* See *R. v. Ganesh Khanderao*, (1889) I. L. R. 13 Bom. 506.

In the above-mentioned case, *A* personated *B* at an examination, called the Vernacular Sixth Standard Examination. *A* passed the examination, and obtained a certificate from the educational authorities in *B*'s name. *B* thereupon applied to the Assistant Collector to have his name entered in the list of candidates for service in the Revenue Department. He attached to this application the certificate issued in his name, as it was a rule of Government that only those who had passed the Sixth Standard Examination were eligible for employment in the Revenue Department. On receipt of this application the Assistant Collector ordered *B*'s name to be entered on the list of candidates. It was held that *B* was guilty of the offence of giving false information to a public servant, within the meaning of the latter part (now first part) of sec. 182 I. P. C.

Reported cases interpreting the section, show that it is not necessary under either clause to prove that actually any action has been taken by the public servant to whom the information has been given and the offence consists in the attempt to induce the public servant to act.

22. The cases of hoaxes played upon public servants would come under this section. In *Budhi Sen's case* (I. L. R. 13 All. 351, 355), Edge, C. J., said, "Suppose a man, knowing the statement to be untrue, but intending the Magistrate to act

upon it, informed the Magistrate of the District that a violent fire was raging in a city in the District of which he had charge. Now if the Magistrate believed that statement he would

**HOAX.** naturally send as many police as he could spare to assist in quelling the fire and keeping order.

He might possibly also ask for the assistance of the military, if there were any in the neighbourhood. That would be a perfect example of a hoax, and I have not a doubt that it would come under sec. 182, whether the Magistrate acted upon the information or not. To take another example of a case which in my opinion would come within the section, although the public servant was not induced to take action or omit to take action upon the information given to him. Let us say that a man had absconded for an offence from Allahabad and that it was surmised that he would seek to escape at one of the shipping ports. Information of his having absconded would be communicated to those ports, Calcutta amongst the number. A person who, knowing that that man had not been arrested, and intending that the authorities at Calcutta would cease to watch the outward bound shipping, telegraphed to the authorities at Calcutta informing them that the absconder had been arrested elsewhere, would in my opinion have committed an offence under sec. 182, although the public servant at Calcutta had not acted on the telegram but had persisted in his surveillance of the outward bound shipping."

. 23. The scope of the section thus seen, let us now proceed to examine the meaning of the language used in the section itself. Some of the words in it, such as "injury" and "public servant" are defined in the Indian Penal Code.

The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property. (See sec. 44 I. P. C.).

The words "public servant" are defined in sec. "Public servant". 21 I. P. C. \*

\* Sec. 21 I. P. C. :—The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

24. A Police Officer of a Native State, not being an officer of Government, *i. e.*, the British Government, is not a public servant within the meaning of this section, and a false information given to such a Police Officer is not punishable under sec. 182 L. P. C. See *In re Rambharathi*, (1923) 77 I. C. 189 : s. c. 25 Cr. L. J. 333 ; I. L. R. 47 Bom. 907.

*First.*—Every Covenanted servant of the Queen ;

*Second.*—Every Commissioned Officer in the Military, Naval or Air Forces of the Queen while serving under the Government of India or any Government ;

*Third.*—Every Judge ;

*Fourth.*—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

*Fifth.*—Every juryman, assessor or member of a panchayat assisting a Court of Justice or public servant ;

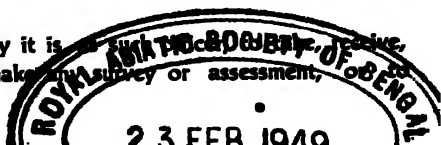
*Sixth.*—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority ;

*Seventh.*—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

*Eighth.*—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience ;

*Ninth.*—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty ;

*Tenth.*—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment,





25. A false information given to a "public servant," with the intention and knowledge as mentioned in sec. 182, although it may become the subject matter of a judicial decision, is indictable. See *post* ¶ 53.

26. If the information is not given to one who is a public servant, a charge under sec. 182, will not lie although a charge for defamation may.

27. In *R. v. Santaram*, (1887) Unrep. Cr. cases, Bom. 315, the accused, a liquor shopman, reported to his master, an Abkari Licensee, that the Abkari Inspector had asked him for money and had watered some liquor in the shop with a view to getting him into trouble. The master as intended by the shopman reported the matter to the Collector, who after causing inquiry to be made gave the Abkari Inspector

The information must be to a public servant.

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levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district.

#### *Illustration.*

A Municipal Commissioner is a public servant.

*Eleventh.*—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election.

*Explanation 1.*—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

*Explanation 2.*—Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

*Explanation 3.*—The word "election" denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

*Note:*—Clause 11 and *Explanation 3* were added by the Indian Elections Offences and Inquiries Act (XXXIX of 1920).

By the provisions of special and local Acts some functionaries have been declared to be "public servants" for the purpose of the Indian Penal Code.

permission under sec. 195 (a) Cr. P. C., to prosecute the shopman under sec. 182 I. P. C., in order to clear his own character. It was held that the accused was not guilty under sec. 182 I. P. C., inasmuch as his master to whom he gave certain information, alleged to be false, is not a public servant, and that if the accused committed any offence, it was the offence of defamation.

28. Among the words which are not defined in the Indian Penal Code, we will first of all notice the "information." word "information." The words "any information" are wide enough to include an oral as well as a documentary information whether the information is given on oath or not.

There is no particular form in which the information need be expressed. In *R. v. Gokal*, (1909) 4 I. C. 477 : s. c. 11 Cr. L. J. 3, it was held that an accused may be convicted of an offence under sec. 182 I. P. C., even if the petition containing the information given by him is not actually signed by him.

29. The words "give information" are distinct from and are wider than the words "making a charge" as used in sec. 211 I. P. C. In order to come within sec. 182, I. P. C., an information need not be such as to amount to making a charge against the person informed against. Consequently statements which cannot be made the basis of a prosecution under sec. 211, can, however, form the subject matter of a prosecution under sec. 182. Vide *Chinna Ramana Gowd v. R.*, (1908) I. L. R. 31 Mad. 506. See *post* ¶¶ 33 and 34.

30. An information within the meaning of the section is not an expression of one's suspicion or of his opinion or belief.<sup>•</sup>

<sup>Suspicion stated in the reports is not an information.</sup>

In *Ananga Mohan Dutta v. R.*, (1917) 22 C. W. N. 478, the petitioner lodged a complaint with the Police to the effect that when the petitioner was at Comilla about twenty-four miles off, a silver mounted *hukka* was stolen after house

breaking and that on his return home he was informed of the occurrence by the inmates of the house and that he suspected two persons, named by him as being implicated in the affair. The Police reported the case to be false and as an outcome of enmity. Thereafter a case under sec. 182, was started against the petitioner. The High Court quashed the proceedings observing that "in his complaint the petitioner made no statement which can be said to be false. It is not denied that the *hukka* was stolen from his house. As to the person or persons who stole it, all that he said in his complaint was that he suspected two persons. That does not amount to giving false information." As to whether an expression of suspicion may come within sec. 211 I. P. C., see *post* ¶ 79, *et seq.*

31. In *R. v. Madho*, (1882) I. L. R. 4 All. 498, where the charge against the accused was based on the second clause of sec. 182, the essence of the offence consists in the intention of inducing the public servant to cause injury, or annoyance to some other person. There the accused falsely informed the Collector that certain zamindars had usurped possession of certain land belonging to Government. On inquiry it was found that it had been decided some years previously that the properties belong to the zamindars, and their names had always been recorded as proprietors thereof, and that the accused could not have been ignorant of the former proceedings, and that, therefore, he wilfully gave false information to give troubles to the zamindars and waste the time of public authorities. Tyrell, J., held that no offence was committed by giving an incorrect information and that in the informant's opinion the Collector had a claim on behalf of the State. "Such information was no more than an expression of a private person's belief or opinion that the Collector might if he chose sustain a civil action with success against certain persons. This is not the 'information' contemplated by sec. 182 and the connected sections of Chapter X. of the

Belief or opinion  
is not "informa-  
tion."

Indian Penal Code ; nor is the intention of 'giving trouble to the zamindars and wasting the time of the public authorities,' attributed to the informant by the Collector, the criminal intention contemplated by sec. 182. Had the Collector agreed with the informant the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of the zamindars or that he would have done anything he ought not to do. The Collector would have only procured the amendment of his records, and called on the zamindars to renounce baseless pretensions : or he might have laid a civil action against them as the local representative of the Government of the country."

32. In *Ghaslawan Singh v. R.*, (1926) 27 Cr. L. J. 1014 : s. c. 96 I. C. 870 (All.), the accused without going to the Thana filed a complaint in Court against certain persons, charging them with dacoity. Afterwards, in answer to the Sub-Inspector's questions he said that he had filed a complaint in Court and that he had been dacoited by certain persons. It was held that it was not an "information" to the Police. Banerji, J. said, "It is impossible to say that, when Ghaslawan made his statement to the Sub-Inspector, he was *moving* the Sub-Inspector to do anything or that he was *charging* the thirteen persons of an offence."

33. Although the words "any information" are very wide, the use of the word "give" in connection with it has given rise to the question as to whether the expression "gives information" means "volunteers information," or not.

In *R. v. Ramji Sajabatarao*, (1885) 1. L. R. 10 Bom. 124, the information from the accused was elicited by a Forest Officer in the course of the inquiry. It was there held that any false information given to that Forest Officer with the intent mentioned in sec. 182 of the Penal Code is punishable under that section, whether that information was

volunteered by the informant, or given in answer to questions put to him by that officer.

In the case of *Panna Lal v. R.*, (1920) 58 I. C. 818 : s. c. 21 Cr. L. J. 818 (Lah), the petitioner Panna Lal wrote a letter to the Deputy Inspector-General of Police that the Sub-Inspector of a Police Station was taking illegal gratifications. The Deputy Inspector-General of Police forwarded the letter to the Superintendent of Police for recording Panna Lal's statement and for necessary action, and the Superintendent of Police passed it on to the Deputy Superintendent of Police for taking statements. The latter recorded the statement of Panna Lal who made allegations as to bribes having been taken by the Sub-Inspector, and mentioned, among others, a bribe of Rs. 500, taken from one Miltar Sain. It was in respect of this last statement that the petitioner was convicted under sec. 182 I. P. C. It was held by the High Court that any false information given to a public servant with the intention mentioned in sec. 182, I. P. C., is punishable under that section whether the information is volunteered by the informant or given in answer to questions put to him. Following the case of *Ramji Sajabarao* (I. L. R. 10 Bom. 124), the High Court held that there is nothing in the section itself to show that the word "information" is meant to be restricted to information that is volunteered. Similarly, in *Sultan v. Wellbourne*, (1925) I. L. R. 3 Rang. 577 : s. c. 90 I. C. 316 ; 26 Cr. L. J. 1532, Maung Ba J., differing from the decisions in *R. v. Nga Aung Po*, (1905) 2 Cr. L. J. 474 : s. c. U. B. R. for 1905, 15. observed. "I am not inclined to give that restricted meaning of 'volunteer' to the word 'give'. For instance, if a Police Officer, has reason to suspect the commission of a cognizable offence, he can investigate the case, under sec. 157 for the discovery and arrest of the offender. During such investigation he may find a person who gives him the required information in answer to questions put by him." See *ante* ¶ 29, p. 19.

34. A different question, however, arises where a person

deposes before the Police in support of an information already given. Can the deposition so given amount to giving an information, within the meaning of sec. 182 I. P. C. ?

In *R. v. Bhikaji*, (1877) Unrep. Cr. Cases, Bom. 124, the accused during the course of the investigation made by the Police falsely deposed about the facts of the case. She was convicted under sec. 182. The Subordinate Magistrate decided that as the woman had not given the original information of the theft to the Police, *but only gave her information as evidence in support of the complaint*, her evidence could not be looked upon as *information* within the meaning of the term as used in sec. 182, and on that ground acquitted her. The case coming up before the High Court, it was held that the statement before the Police under sec. 119 Cr. P. C., of Act X. of 1872 (corresponding to sec. 161 of Act V of 1898) would be included in the word "information" as used in sec. 182 I. P. C.

In *Mangu v. R.*, (1914) 25 I. C. 978 : s. c. 15 Cr. L. J. 650, one Mangu gave information to the Police that his house had been broken into and certain properties were stolen also and that he suspected some persons on the ground of enmity. The information was found false and Mangu was convicted under sec. 182 I. P. C., which was upheld by the Chief Court.

In the same case, the Police examined Nihali, the mother, and Mangal, the step-father of Mangu, who corroborated the story of Mangu. Nihali and Mangal were convicted also in the same case. The Chief Court held them not guilty of an offence under sec. 182 I. P. C., being of opinion that the statement made by them under sec. 161 Cr. P. C., in answer to questions put by the Police Officer investigating the case did not amount to "giving information" within the meaning of sec. 182. In this case Justice Shadi Lal observed : "A person making a false statement to the Police is not liable to be prosecuted for perjury and sec. 169, Cr. P. C., lays down in clear terms that the statement if

taken down in writing, shall not be used as evidence (except for contradicting witnesses). It, therefore, seems to me to be an evasion of law if that statement could be made the basis of a charge under sec. 182, I. P. C. The expression 'give information' in the latter section means to volunteer information and was not, in my opinion, intended to apply to a statement made in answer to questions put by a public servant. The judgment of the Judicial Commissioner, Upper Burma, reported as *R. v. Nga Aung Po*, (1905) 2 Cr. L. J. 474, takes the same view, and I think the reasoning receives support from the ruling of the Madras High Court in *Chinna Ramana Gowd v. R.*, (1908) 1 L. R. 31 Mad. 506, which is to the effect that a statement made under sec. 162, Cr. P. C., in answer to questions put by a Police Officer making an investigation under sec. 161, Cr. P. C., does not amount to a false charge within sec. 211 I. P. C."

The above-mentioned case of *Mangu* as well as the cases cited therein were referred to and distinguished in *Panna Lal v. R.* See *ante* ¶ 33, p. 22. In this case Martineau, J., held that the statements which were made in the case of *Mangu v. R.*, "were made to a Police Officer in an investigation under the Criminal Procedure Code, and the learned Sessions Judge has rightly held that the ruling is, on that account, inapplicable, as a witness examined by a Police Officer under sec. 161 of the Criminal Procedure Code is bound to answer the questions put to him, whereas in the present case Panna Lal was not bound to make a statement when questioned by the Deputy Superintendent, who was making only a departmental inquiry and not an inquiry under the provisions of the Code. \* \* \* The fact that a person cannot be held guilty of perjury for making a false statement when questioned by a Police Officer under sec. 161 of the Criminal Procedure Code appears to me to be no reason for holding that he cannot be convicted of an offence under sec. 182 of the Indian Penal Code in respect of that statement, if it is shown that he made the statement with the intention or knowledge mentioned in the

section. As regards the proviso to sec. 162, Cr. P. C., it was observed, "that the prohibition against using the statement recorded by the investigating officer as evidence applies only to the use of the statement as evidence in the case in the investigation of which the statement was made." The case of *Chinna Ramana Gowd v. R.*, (see ante ¶ 29, p. 19), was distinguished on the ground that it was a case under sec. 211 which relates to charges made falsely.

The case *R. v. Mangu*, (15 Cr. L. J. 650), was further considered in *Sultan v. Wellbourne*, (26 Cr. L. J. 1532), in which a distinction appears to have been kept in view between an information given to a Police Officer and a statement made as a witness before an investigating officer under sec. 161 of the Criminal Procedure Code, but on the facts it was decided that the statement in question did not amount to an information given to a Police Officer. See ¶¶ 77 and 78.

In *Biswanath Singh v. R.*, (1927) 104 I. C. 712 : s. c. 28 Cr. L. J. 872, it was held by the Patna High Court that the words "give information" in sec. 182. Penal Code, should not be interpreted as necessarily meaning "volunteer information," in the sense that it must be information on *some matter which is not already under inquiry by a public servant*.

¶ 35. The question, whether a particular statement made by a witness amounts to giving an information, seems to be a question which should be decided more on the facts of the case than on the legal interpretation of the words.

If a witness is bound by law to make a statement, his **Voluntary statement.** statement whether in answer to questions or not, is a voluntary statement. Where he is

bound by law to answer questions, as in a police investigation he may yet go on making *statements voluntarily and quite irrelevantly in which cases his statements may amount to giving information*. It is only in cases where after an information had been lodged on the Police Station of a cognizable crime already committed, a witness is asked questions and he makes answers in reply thereto in regard to matters



already informed to the Police that he cannot be held to have given any information. *Where, however, as in the case of suspected crimes, a witness in the course of the investigation begins to supply the information about the offence there is no reason why such information, if false and malicious, should* "Give information— not come within the meaning of words "give information" as used in sec. 182 I. P. C.

36. The information must be false and its truth must be denied by the prosecution.

In *Ananga Mohan Dutta v. R.* (1917) 22 C. W. N. 478, (see *ante* ¶ 30, p. 19.) one of the grounds of acquitting the accused was that the accused made no statement which can be said to be false. The High Court observed that it was not denied in that case that there was a theft in the house. As to the person or persons who stole it, all that he said in his complaint was that he suspected two persons. That does not amount to giving false information.

37. Again, the information given must be known by the accused to be false or believed by him to be such. The prosecution is bound to prove this knowledge affirmatively in the same way as it is bound to prove any other fact. There is no presumption one way or the other. If one purports to give an information from his own knowledge and it is shown that those facts are untrue, this in itself is enough to show that the informant knew his information to be false but if the information is derived from hearsay, the informant's knowledge or belief in the falsity of the facts should be proved by circumstances or otherwise. One of the circumstances to be considered, is the motive of the accused in giving the information.

38. In *re Moulvy Abdool Luteef*, (1868) 9 W. R. Cr. 31, one Ameer Hossein was at one time engaged as a Mohurir in the Court of the Moonsiff of Hazaribagh. When Ameer Hossein quitted the post as Mohurir, the Moonsiff gave him

Prosecution to prove affirmatively the knowledge or object of falsity.

Hasty and indiscreet information based on hearsay.

testimonials of good character of the highest description ; and on the strength of them Ameer Hossein was appointed an Inspector of Police in the Hazaribagh District. Subsequently, however, this Ameer Hossein had a difference with the Moonsiff, and made a complaint against him before the Deputy Commissioner of Hazaribagh. Thereupon the Moonsiff, as Moonsiff, sent a roobookaree out of his Court of the address of the Superintendent of Police of Hazaribagh, stating that he had heard from two certain persons, whom he named, that Ameer Hossein had been dismissed from the Police force in the District of Bhagalpur for misconduct, and requesting that, after inquiry made, the District Superintendent of Police would recall the testimonials that he (the Moonsiff) had given to Ameer Hossein, and would also pass any other orders that he thought fit. The District Superintendent of Police held an inquiry into the conduct of Ameer Hossein, and found the misconduct laid against him to have no foundation in fact, and thereupon Ameer Hossein charged the Moonsiff with an offence under sec. 182, I. P. C.; and the Courts below found the Moonsiff guilty, and sentenced him to pay a fine of rupees two hundred.

The High Court set aside the conviction and sentence, one of the grounds being that "to constitute an offence under this section, the information given should have been 'information' which the Moonsiff (informer) 'knew or, believed to be false' and it should have been proved that he gave it with such knowledge." Hobhouse, J., said, "It is clear that there is no evidence of this knowledge or belief, and that, on the contrary, though the Moonsiff acted on the merest hearsay, and, therefore, with a haste and indiscretion evidencing him to be unfit for the office of a Judge, yet that he did not report to the District Superintendent against Ameer Hossein anything more than had been told to him deliberately by others." See also the case of *Mirza Hassan Mirza v. Mahbuban*, (1913) 18 C. W. N. 391, *post* 192.

In *Moulvy Abdool Luteef's* case; Hobhouse, J., questioned whether the roobookaree of the Moonsiff was not a privileged

communication, and doubted, if it was politic that such communication from one public officer in his administrative capacity to another should, even if they could legally be made the foundation for a criminal charge against such officer.

39. The information should be given with the intention to cause or knowing it to be likely that the informer will thereby cause a public servant, (i) to use his lawful authority to the injury of any person, or, (ii) to do or omit to do some act, which, if the true state of facts were known to him he would not do or would omit to do.

**Informer's intention.**

40. What the intention in giving the information was, must be and should be found as any other matter of fact *inferred reasonably from the facts and circumstances of each case*. It can even be presumed where the complaint is made against a subordinate officer to his superior. But, if the requisite intention cannot be inferred having regard to all the facts of the case, the informer cannot be convicted.

**Information to be gathered from the facts of the case.**

41. Thus, in *Debi, v. R.*, (1918) 16 A. L. J. 105 : s. c. 44 I. C. 113 ; 19 Cr. L. J. 257, the applicant Debi, a peon of the Court of Wards, had a querrel with Shiam Deo, brother of one Suraj Bali, a *xilladar*, employed by the Court of Wards. Mrs. Thomas, wife of the Special

**Petition with the object of having resignation accepted and having false account of a case in anti-cipation of a charge.**

Manager, interposed to stop the scuffle. Later on, Suraj Bali complained to the Special Manager, Mr Thomas. Under these circumstances Debi addressed to the Collector, the officer in charge of the Court of Wards, a petition in which he requested to be allowed to resign his employment. Therein he embodied his own version of the matter which was not quite true and made some false statements defamatory to Mrs. Thomas. The Collector recorded the statements on oath of Debi and Shiam Deo, and satisfied himself that the allegations made in Debi's petition against Mrs. Thomas were untrue and he ordered his prosecution under sec. 182 I. P. C. The High Court (Piggott, J.) held that the petition of Debi did not

amount to a complaint and did not supply the necessary ingredients for such an offence. He said, "I wish to make it quite clear that, if that petition had contained any allegations against any person employed as a subordinate under the orders of the Collector of the district as Manager of the Court of Wards, I should have been prepared to hold that the making of such allegations under the circumstances amounted to an offence under sec. 182 I. P. C. The *presumption* would

**Presumption when a subordinate officer is complained against before a superior officer.**

be that the person complaining to a superior officer of misconduct on the part of his subordinate intended that the superior officer in question should use his powers to the injury or annoyance of the person complained of, or at any rate knew that such a result was likely. I do not think, however, that anything in Debi's petition can be construed as an allegation either against Mrs. Thomas, or against Suraj Bali. Reading this petition in connection with the facts as found by the Sessions Judge, it seems to me that Debi's object was, *firstly*, to get his resignation accepted at once, so that he might leave the neighbourhood, and *secondly*, to place on record a document containing a distorted version of what had actually happened, in order to discount beforehand any proceeding which might be instituted against him by Suraj Bali or his brother in a Criminal Court, or by Mr. Thomas, as special Manager of the Court of Wards, for his dismissal from his employment. I certainly do not think that he intended that the Collector should use his powers as Manager of the Court of Wards so as to cause injury or annoyance to Mrs. Thomas or to Suraj Bali's brother, nor I am prepared to infer that he knew it to be likely that such a result will follow."

42. Accordingly where the statements were made by a

**Statement of a person for the purpose of his defence is not an "information" with intent to cause injury to another person.**

person for the purpose of his defence and not for causing injury, such statements cannot be held to be "information" given to a "public servant" with intent to cause a public servant to use his lawful power to the injury of

another person. *R. v. Daria Khan*, (1870) 2 N. W. P., H. C. R. 128.

43. Regarding false allegations by an accused person made for the purposes of defence, there appears to be a conflict of opinions as to whether they come under sec. 182 I. P. C.

In *R. v. Khan Mahomed*, (1908) 1 S. L. R. 124 : s. c. 8 Cr. L. J. 378, the accused applied to the District Magistrate for a transfer of a case pending against him in the Court of a Subordinate Magistrate, and supported the application by an affidavit making false allegations against the trying Magistrate, it was held that the offence committed by him fell under sec. 182, and not under sec. 211. *It was observed that sec. 182 "is wider in its scope, and it is not necessary that the person accused should be legally under an obligation to tell the truth."* The same view has been taken by the Court of Judicial Commissioner, Oudh, in *Tribhavan v. R.* (1908) 12 O. C. 308 : s. c. 10 Cr. L. J. 509 : 4 I. C. 160.

44. But in *R. v. Subbayya*, (1889) I. L. R. 12 Mad. 451, where the accused appealed against his conviction by a Magistrate, and, in his petition of appeal, stated, among other things, that the trying Magistrate had declined to summon the witnesses cited for the defence. On being required to give a statement to that effect on solemn affirmation by the Appellate Court, he did so. On inquiry it appeared that that statement was false. Thereupon the accused was prosecuted for offences under secs. 181 and 182 I.P.C.

The High Court held that the appellant had not committed an offence under sec. 181, or 182 Penal Code. The High Court remarked. "It was not the intention of the Legislature that the accused should be called upon during the trial of a criminal case to make a statement on oath, or that he should be liable to punishment for giving false answers to questions put

to him. (See sec. 342 Cr. P. C.). The Code does not require that the appeal petition should be verified ; sections 428 and 540 do not seem to us to authorize the examination of the accused as a witness. *A criminal appeal is a continuation of the criminal case* and, except so far as there is a provision to the contrary, the appellant has the privilege of the accused and cannot be punished for making a false statement, (sec. 342 Cr. P.C.)"

The same view was taken in *R. v. Matan*, (1910) I L. R. 33 All. 163. There the accused person in support of an application for the transfer of the case against him to some other Magistrate made unfounded and defamatory allegations against the trying Magistrate. It was held that the accused could not be prosecuted in respect of such allegations under sec. 182 I. P. C. Chamier, J., said, "It was held in *R. v. Daria Khan*. (1870) 2 N. W. P. H. C. R. 128, that statements made by a prisoner for the purpose of his defence cannot be held to be information given to a public servant within the meaning of sec. 182 of the Indian Penal Code. It appears to me that the applicant was in the position of an accused person when he presented the application for a transfer. Had the case been pending in the Court of the Magistrate having power to make over cases to other Magistrates, e.g., a District Magistrate or Sub-Divisional Magistrate and the allegation had been made concerning some Magistrate to which it proposed to transfer the case, there would, I suppose, be no doubt that the case was covered by the decision in *R. v. Daria Khan* of which, if I may say so, I entirely approve. It seems to me that it can make no difference that the statement was made to a Magistrate other than that in whose Court the case was pending. I hold that the applicant was at the time in the position of an accused person, and I think it would be straining the language of sec. 182 to hold that a statement made in such circumstances was information given to a public servant within the meaning of that section. I feel confident that the section was never intended to apply to such a case".

On the same grounds the accused cannot be tried for an offence under sec. 193 I.P. C. See the cases of *In re Barkat*, (1897) I. L. R. 19 All. 200, and *R. v. Bindesbri Singh*, (1906) I. L. R. 28 All. 331 ; and *Allah Wasai v. R.*, (1925) 26 Cr. L. J. 1369 ; s. c. 89 I. C. 457 (L).

45. Under clause (a) of sec. 182 I.P.C., the intention must be to induce the public servant to do or omit to do which he would not have done, had he known the true facts.

A question here arises as to whether the act intended to be done should be one which the public officer is legally justified to do or which would call for an action on his part at all. There is a conflict of judicial opinions on this point.

46. In *Manohar v. R.*, (1918) 16. A. L. J., 614 ; s.c. 19 Cr. L. J. 895 ; 47 I. C. 91 (All.), it was held **Asking a public servant to do an illegal act : Cl (a).** that it must be a lawful act which is asked to be done by the public servant, in that case, the applicant submitted a petition to the District Magistrate in which he stated that certain tenants occupying his houses had absconded, leaving the houses locked up, and he prayed that the houses might be unlocked and opened to enable him to execute the necessary repairs, as otherwise the houses would fall down when the rains began. The application was sent to the Police for compliance and report. The Sub-Inspector reported that the allegations in the petition were untrue. Thereupon the accused was tried and convicted under sec. 182 I. P. C. The case coming up before the High Court in revision, Banerji, J., said, "In this case it is not alleged that the cl. (b) is applicable. The question is whether cl. (a) applies. Under that clause the false information must have been given with the intention or the knowledge that the public servant would do or omit anything which he ought not to do or omit if the true facts were known to him. In the present case if the true state of facts were known to the District Magistrate, he would not be legally competent to issue the order which he issued or which was asked for. It is equally clear that he would not be competent to make the order if the information

*given to him was untrue.* It seems to me that cl. (a) of sec. 182 applies to a case in which it is intended that a public servant should do or omit to do something which he ought to do or omit to do if he knew the true facts, that is, which he would be *legally* justified in doing or omitting to do if he knew the true facts. *Asking a Magistrate to do an act which would be an illegal act even if true facts were stated to him would not, it seems to me, come within the purview of the section.* The information must be information regarding a fact which would induce the Magistrate to do something which he would be *legally* competent to do if he had been cognizant of the true facts. As I have already stated, if the true facts were before the Magistrate he could not have issued the order which he issued to the Police. By reason of the true facts not being stated he issued an order which he could in no case have issued. Therefore, it seems to me that the present case is not a case to which the section applies."

This ruling was dissented from in *Sant Ram v. Diwan Chand*, (1922) 75 L. C. 289 : S. C. 24 Cr. L. J. 913 (Peshawar Judicial Commissioner's Court), where it was held that when a person gives false information to a public servant to take certain action, it cannot be said that he is not punishable under sec. 182 L. P. C., merely because the public servant was not legally entitled to take the action requested. In this case owing to a false information of the respondent, the Cantonment Magistrate ordered some shops to be opened and the properties found in them placed in deposit. The Court after quoting the section, observed, "It cannot be contested that if the Magistrate had known that the information given to him were false, he ought not to have had the shops opened. But the wording of the section does not go as far as the ruling quoted implies. It does not say specifically that if the Magistrate ought not to have taken the action in any case, the person who gives him the false information is not punishable under this section. I may note that this ruling appears to be a perfectly isolated one. It does not refer to



any previous decision of the same nature. It appears to me to be a *reductio ad absurdum* of section 182, I. P. C., to hold that when a person gives a false information to a public servant deliberately asking that public servant to take certain action, he is not punishable under this section because the public servant was not legally entitled to take the action requested. It would be more than ever *reductio ad absurdum* in a case like the present one where the application was nothing unusual but was one of a kind constantly made to Magistrates on which Magistrates were in the habit of taking the action requested. The applicant believed that the Magistrate had power to take the action requested and the Magistrate himself believed it. So far as this point goes, therefore, I cannot but hold that the persons making an application of this nature based upon deliberately false information are certainly liable to prosecution under sec. 182, I. P. C."

47. In *Algoo Lal v. R.*, (1920) 18 A. L. J. 636 : s. c. 21 Cr. L. J. 576 ; 57 L. C. 96, the charge

**False report  
of non-cognizable  
offence.**

against the appellant, Algoo Lal, was that he abetted one Janakbarta in making a report at a Police Station (alleging the disappearance of a bullock), which contained statements of fact known to be untrue by both Algoo Lal and Janakbarta, with intent that injury should be caused to some third person. Algoo Lal was convicted under sec. 182. The case coming up before the High Court in revision, Piggott, J., held that the mere making of a report, known to contain statements which are not true, at a Police Station of a non-cognizable offence, not calling for any action on the part of the Police Officer to whom it is made, falls short of fulfilling the conditions necessary to justify a conviction under sec. 182. He added, "It is possible that the making of this report was the first step in a proposed course of action, the ultimate object of which was the bringing of a false charge against one Sumeshar. I cannot say that there seems to me to be legal evidence warranting an affirmative finding that this was so, but even supposing it was, I think

the act went no further than preparation for the commission of a more serious offence. Except in the case of a few offences of a very special nature, the Indian Penal Code does not recognize preparation for committing an offence as punishable, unless something is done amounting to an actual attempt."

48. But in *R. v. Incha Ram*, (1922) I. L. R. 44 All. 647, a different view was taken. There Incha Ram falsely gave information to the Police that a horse belonging to him had strayed, when in fact he had sold it sometime previously, to his cousin and made this false report in order to enable him to make a false charge against the man who had bought the horse from his cousin. Stuart, J., observed: "In making this report he clearly gave false information to the Police which he knew to be false and he must have known that it was likely that he would thereby cause the police authorities, if they found the horse answering to his description, to take it from the possession of its rightful owner. On these facts an offence under sec. 182 was clearly made out."

49. Under clause (b) of sec. 182 I. P. C., the intention must be to cause the public servant to use his lawful power to the injury or annoyance of some person. If the public officer is not empowered to act to the injury of the person informed against, it is a question whether the accused can reasonably be held to entertain an intention to cause the injury through such an officer. Moreover, the words "to use his lawful power" as used in sec. 182, have been held to refer to some power to be exercised by the officer falsely informed, which shall tend to direct and immediate prejudice of the person informed against.

50. In *R. v. Perlannan*. (1881) I. L. R. 4 Mad. 241, a complaint was made to the Village Magistrate that certain persons were beaten, and that jewels were taken from the persons beaten. The Village Magistrate could not act upon it but only could pass it on to some higher authority. The Village Magistrate reported the matter to the Police Station

and the Station Officer, after inquiry, referred the case as false to the Sub-Magistrate. The case came up before the High Court in its Revisional Jurisdiction. In deciding, whether sec. 182 was applicable to the circumstances of the case, the High

Court said : "We think the words 'to use his <sup>Meaning of "to use his lawful power."</sup> lawful power' in sec. 182, refer to some power

to be exercised by the officer misinformed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. They do not, we think, apply to such prejudice as might eventually arise in consequence of certain harmless intermediate steps to be taken by the misinformed officer such as were taken in the present case, where all that the misinformed officer did or could do was to pass on the information."

With due deference to the opinion of the learned Judges, it is submitted that in such a case the information is certainly intended for and given to the person who can take action on it and use his lawful power, and the false information was given to a person whose duty it was to pass it on to another officer who has lawful power to take action on the complaint; hence, it is not a harmless step taken by the misinformed officer.

51. In *R. v. Shripati bin Waman*, (1897) Unrep. Cr. Cases, Bom. 946, the accused informed the Mamlatdar that the complainant (who was the widow of a military pensioner and who was entitled to receive a pension till her death or remarriage) was remarried. The Mamlatdar was the officer who disbursed the pension to which the complainant was entitled and as such had the power to stop payment of the pension. This he would naturally have done at once on receipt of information that the complainant had remarried and so forfeited her right to the pension. The accused was convicted under sec. 182 I. P. C. The case came up before the Bombay High Court in its Revisional jurisdiction, before the Judges Parsons and Ranade. The case reported in I. L. R. 4 Mad. 241, was relied on by the accused. The Judges said that it was not necessary to discuss the Madras decision, because in this case the Mamlatdar

to whom the false information was given had power to be exercised by him to the direct and immediate prejudice of the complainant against whom the information was levelled. Judges further observed that "the direct and immediate result of the information was that the Mamlatdar instituted an inquiry and called up the complainant. This he would not have done had he known that the story of the remarriage was false and this alone must have caused annoyance to the complainant."

52. In *R v. Jonnalagadda Venkatragudu*, (1905) L L R. 28 Mad. 565, the accused on the 3rd June 1904, gave to the Village Magistrate (a public servant) oral information of an offence having been committed. The Village Magistrate informed the Police Station-house Officer, and he went on the 4th June and took a complaint from the accused under sec. 154, Cr. P. C. The information given to the Village Magistrate and the complaint signed by the accused on the 4th were false and the accused was charged under sec. 182 I. P. C. The Magistrate who tried the case, acquitted the accused on the ground that giving the information to the Village Magistrate is not an offence within sec. 182, and the complaint signed by the accused on the 4th was not a complaint within sec. 182, as the accused had already given information to the Village Magistrate, and that the complaint to the Station-house Officer was not admissible in evidence having been made under sec. 162, Cr. P. C. It was held by the High Court that "the information given to the Village Magistrate was sufficient to justify a charge under sec. 182, I. P. C., even if it had not been followed up by the Station-house Officer taking a complaint under sec. 154, Cr. P. C.;" and it was further held that as *such information was given with a view to have it passed on to the Station-house Officer*, who, on receiving the information, took a complaint in writing from such informant, *the complaint was one taken under sec. 154 Cr. P. C., and not under sec. 162 Cr. P. C.*

53. When false information is given to a public servant,

it is not necessary that the act expected of him need be one within his powers to do as a public servant.

In *Imandy Appalaswami v. R.*, (1914) 25 I. C. 1000 ; s. c. 15 Cr. L. J. 672 (M), the accused, a village postman, gave an information to a public servant (a Sub-Postmaster) who was prevailing upon a villager to whom he was delivering a money order to pay him a small sum as present when a third party interfered and took him to task for demanding the present. The accused thereupon threw down his bag, ran back to the Sub-Postmaster and told him that he had been beaten by that third party who robbed him of his bag, etc. The Sub-Postmaster immediately gave information to the Police, who inquired into the matter and referred the complaint as false. Proceedings were then initiated against the postman under sec. 211, I. P. C., for giving false information to the Police which, however, ended in his favour. He was then prosecuted under sec. 182 I. P. C., for giving false information to the Sub-Postmaster (a public servant) with a view to his taking action against the third party and, was convicted.

It was urged before the High Court "that sec. 182 applies only to a complaint to a public servant when it is made with the intention of inducing such public servant to take action of a sort which only a public servant of the description in question could take and which would not be open to a private individual." The High Court did not accept the interpretation and observed that "in illustration (a) to the sec. 182, the action expected to be taken by the public servant was simply dismissal of a subordinate and any master could do the same. This illustration is, therefore, irreconcilable with accused's interpretation of the section which must be rejected.'

#### B.—ABETMENT OF AN OFFENCE UNDER SEC. 182 I. P. C.

54. Section 107 of the Indian Penal Code lays down :—

"Abetment"  
defined.

"A person abets the doing of a thing, who—

- First*.—Instigates any person to do that thing ; or,  
*Secondly*.—Engages with one or more other person

or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or,

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

### *Illustration.*

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that act and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

*Explanation 2.*—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

From the section quoted above it will appear that a person may abet an offence of lodging a false information under sec. 182 when such person *instigates* any person or *engages* in conspiracy, or intentionally aids by act or illegal omission for lodging a false information with intent to cause a public servant to use his lawful power to the injury or annoyance of another person.

It is not necessary that the statements of the abettor and the person abetted should appear in the information before the public servant. It is enough to convict a person of abetment of an offence under sec. 182, if there is evidence of engagement in the conspiracy for lodging the false information before a public servant.

Thus is *R. v. Ram Jiawan*, (1926) 95 L. C. 598 : s. 27

Cr. L. J. 822 (0), the false report was made by Ram Jiawan and Ram Naresh jointly. Ram Jiawan first stated the story and Ram Naresh corroborated him. The Chief Court remarked : "But even if Ram

Abetment of an  
offence under  
sec. 182 I. P. C.

Jiawan alone had told the story and Ram Naresh had said nothing, both the men were clearly guilty on the facts : Ram Jiawan under the provisions of sec. 182 and Ram Naresh for abetment, having engaged with Ram Jiawan in a conspiracy to make a false report and the false report having been made in pursuance of the conspiracy. In respect of the decision of the late Mr. Justice Karamat Husain which is reported as *Umrao Singh v. R.*, (1909) 6 A. L. J. 236 : s. c. 9 Cr. L. J. 518 ; 2 I. C. 200, it is sufficient to say that I do not agree with the view which he took. He laid down that it was impossible for any person to be convicted in respect of a false report unless that false report had been taken down from his dictation. He thereby clearly overlooked the provisions of the law of abetment."

As the offence is complete as soon as the false information is given, and as there cannot be abetment after the offence is committed, a false evidence in support of a false information is not an abetment. Regarding the trial of such cases, see Chap. XIV, ¶ 405 *et seq.*

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## • CHAPTER IV.

### A.—Notes and Commentaries on Sec. 211 I. P. C.

55. It will appear that in sec. 211, by the use of the words "falsely charges", "institute criminal proceeding" and "causes to be instituted any criminal proceeding", three distinct acts are contemplated, *viz.*, *first*, a false charge, and *secondly*, the institution of a criminal proceeding, and *thirdly*, causing to be instituted any criminal proceeding by the accused person. Each of the said acts is penal.

Three distinct acts are contemplated in sec. 211 I. P. C.

In *R. v. Nobokristo Ghose*, (1867) 8 W. R. Cr. 87, the *first* charge against the prisoner was under sec. 211, that he, on the 5th June 1867, instituted or caused to be instituted, against Tiluck Singh, a false charge of an offence punishable with transportation for life, with intent to cause injury to the said Tiluck Singh, knowing that there was no just or lawful ground for such charge. The *second* charge under the same section, that he, on the same date, instituted or caused to be instituted a criminal proceeding against Tiluck Singh, with intent to cause injury to Tiluck Singh, knowing that there was no just or lawful ground for such proceeding. There was also a *third* charge under sec. 167 I. P. C. The accused was acquitted by the Sessions Judge on the first charge, but convicted on the second and the third charges. Macpherson, J., held that "there was nothing wrong in charging the prisoner as he has been charged in the 1st and 2nd counts. For it appears to me to be clear that under sec. 211, 'instituting a criminal proceeding', may be treated as an offence in itself, apart from 'falsely charging' a person with having committed an offence."



56. The expression "*making a false charge*" is wider than the expression "*institute a criminal proceeding*". The latter necessarily implies that a charge has been made, but when a false charge is made a criminal proceeding may or may not follow.

In *Hardeo Singh v. Hanuman Dat Narain*, (1903) L. L. R. 26 All. 244, a complaint was laid by Hardeo Singh against six persons, including one Hanuman Dat Narain, of criminal trespass and assault. Hanuman Dat Narain was, however, though mentioned in the complaint, not summoned to answer any charge but others were, and the case was found false. Hanuman Dat prayed for prosecuting Hardeo Singh under sec. 211 I. P. C., and his prayer was granted. It was contended before the High Court that the prosecution was bad as no process was issued against Hanuman Dat Narain. The

Maliciously false complaint is an offence even if the Court does not take any proceeding

High Court said (p. 249) : "True it is that he was not prosecuted ; but it is also clear that he was named in the complaint of Hardeo Singh as having taken part, and an active part, in the criminal offences charged against him and the others. It is said that no criminal proceedings were taken against him, and that is so. But this is not necessary, inasmuch as sec. 211 of the Indian Penal Code provides for a prosecution where a person *falsely charges* another with an offence."

57. The "*criminal proceedings*" and "*false charges*" within the meaning of sec. 211 I. P. C., must be proceedings and charges in British India, where the Penal Code is in force. Criminal proceedings instituted or false charges made before a Court in a Native State are not within the scope of this section. In *re Rambharti*, (1923) 25 Cr. L. J. 333 : s. c. L. L. R. 47 Bom. 907 ; 77 I. C. 189.

58. As two distinct offences are contemplated in the section it would be convenient to consider each separately. Now first, as to false charges :—

The necessary ingredients to constitute a false charge under sec. 211, are three. In the *first* place, the charge must be made with intent to injure; in the *second* place, it must be false; and in the *third* place, it must be without just or lawful ground; in other words, it must be made maliciously. *R. v. Sham Lall*, (1887) 1 L. R. 14 Cal. 707, 720, (F. B.).

59. There is no definition of the word "charge" in the Indian Penal Code. In the Criminal Procedure Code, the word is used in the sense of a formal accusation of an offence framed by the Court against an accused person. Obviously, such a meaning cannot be given to the word as used in sec. 211 L. P. C., which relates to accusation made by private persons.

60. It is, however, clear that *the word denotes something more than a mere "giving an information"* as used in sec. 182 L. P. C. In *Rayan Kutti v. R.*, (1903) 1, L. R. 26 Mad. 640, 643, (see *post* ¶ 65), that "it is obvious that the word 'charges' as used in sec. 211, means something different from 'gives information'. A mere random conversation or remark would not amount to "a charge." *R. v. Subbanna Gaundan*, (1862) 1 Mad., H. C. R., 30.

61. The word "charge" has been differently interpreted by the different High Courts.

Interpretation of "charge" by different High Courts. Standing by themselves the words "falsely charges" are wide enough to include an accusation made to a private person as well. The omission of such words as "public servants" which occur in sec. 182, may lead to the conclusion that false charges in order to come under sec. 211, need not be made to a public authority. But, the words have been interpreted with reference to their context and have been held to be restricted to those charges only which are made to a magisterial or police authority.

62. Thus in *R. v. Jamoona*, (1881) 1 L. R. 6 Cal. 620, the accused, Jamoona, was charged under sec. 211 L. P. C., with having made a false charge of rape against one, Sheikh Ahmed, a non-commissioned

officer with intent to injure him, before Captain Simpson, Adjutant, and Station Staff Officer of the Cantonment of Dorenda, who had no powers, magisterial or police, and as such incompetent to act upon it. There was an inquiry, and the charge being found to be false by the military authorities, the Commanding Officer caused Jamoona to be prosecuted before the criminal authorities under sec. 211, and she was committed for trial, and convicted by the Judicial Commissioner.

A proceeding before a person not a Police Officer or having no magisterial power.

The High Court set aside the conviction as the appellant neither instituted, nor caused to be instituted, a criminal proceeding. The High Court said: "She, no doubt, charged the non-commissioned officer with an offence but the Station Staff Officer having neither magisterial nor police powers, as we are informed, it seems to us that sec. 211, will not apply. We do not think it is unduly refining the words of the section to say that *the false charge must be made to a Court or to an officer who has power to investigate and send up for trial.*" With regard to the above ruling, Mr. Mayne in his Criminal Law in India, (3rd Edition, p. 597) observed that "the language of the judgment went further than was probably meant."

If a charge of a non-cognizable offence is made to a Police Officer, he has no power to investigate it. All that he can do is to enter it in his book, and refer the complainant to a Magistrate, without whose order he can do nothing more. Nor is a complaint of that which is not an offence punishable as a false charge of having committed an offence; as where the defendant was convicted of falsely charging the prosecutor with refusing to give her a receipt on stamped paper for money paid by her to him. See the case of *R. v. Gapau kom Kusaji*, (1863) 1 Bom. H. C. R. 92. Had the case occurred after the passing of Act I of 1879 (sec. 64,) the decision might have been different. See *post* ¶ 70.

However, in *R. v. Karigowda*, (1894) I. L. R. 19 Bom. 51, 69, Justice Ranade held that the words "falsely charging" must be construed along with the words which speak of the "institution of proceedings" and that these latter words are used in a technical and exclusive sense, and by parity of reasoning, the same restricted sense must be given to the words which relate to a false charge. See *post* ¶ 71.

This was a very restricted meaning given to the words in the above Bombay case. But in that very judgment, Jardine, J., did not go so far as Justice Ranade did, and the former in deciding whether an accusation amounted to making a false charge, applied the test, *viz.*, whether or not the accused in making the imputation intended to set the criminal law in motion.

63. In Oudh, the Judicial Commissioner in *Gaya Barhai v. R.*, (1922) 69 I. C. 81 : s. c. 23 Cr. L. J. 641, following the ruling in I. L. R. 6 Cal. 620, and I. L. R. 30 Cal. 415, held that "the words 'falsely charge' may be in themselves wide enough to include an accusation made to a private person, but in the context in which they stand they must be restricted to a charge made to some person in authority, that is to say, to some person who is in a position to get the offender punished. In fact offences under sec. 211 fall under two categories only. The first is a complaint to a Magistrate; the second is a report of a cognizable offence to a Police Officer."

64. In *R. v. Mathura Prasad*, (1917) I. L. R. 39 All. 715, 716, Walsh, J., said, "What amounts to a 'charge' must, in the absence of a definition in the Code itself, depend largely upon the circumstances, and it is, therefore, impossible to lay down any general rule. But I accept what I understand to be substantially the view taken in *Chinna Malli Gowda v. R.*, (1904) I. L. R. 27 Mad. 129, and also in *Chinna Ramana Gowd v. R.*, (1908) I. L. R. 31 Mad. 506, that a false "charge" must be made to an officer or to a Court who has power to investigate

and send it for trial, and if it is made to such a person, then, I think, it comes within the section, and I adopt the view of Mr. Justice Chamier in *Zorawar Singh v. R.*, (1911) 8 A. L. J. 1106 : s. c. 11 L. C. 617 : 12 Cr. L. J. 433, that there being no definition of the word "charge" and there 'being no procedure of the nature of a "charge" in the Indian Law, the question is, whether the accusation is made with the intention to set the law in motion.' What amounted to a charge was according to this decision a question of fact depending on the circumstances of the particular case.

65. In the Madras High Court in *Rayan Kutti v. R.*, (1903) L. L. R. 26 Mad. 640, the High Court held, "We think, the words 'falsely charges' must be construed with reference to the words which speak of the institution of proceedings. *The true test seems to be*, does the person who makes the statement which is alleged to constitute the "charge" *do so with the intention and object of setting the criminal law in motion* against the person against whom the statement is directed. Such object and intention may be inferred from the language of the statement and the circumstances in which it is made." In this case a petition was presented to the Sub-Magistrate with the object of bringing it to the knowledge of the authorities certain matters regarding which the petitioner had received information, in order that there might not be a repetition of an alleged "tutoring" of witnesses, and not with the object that the authorities should institute criminal proceedings. Applying the aforesaid tests to this case, it was held that the petition is not a "charge" within the meaning of sec. 211. In this case the facts did not constitute an offence under sec. 182. (See *ante* ¶, 60).

But in the case of *The Sessions Judge of Tinnevely Division v. Sivan Chetti*, (1909) L. L. R. 32 Mad. 258, it was held that the words "false charge" in sec. 211 must not be understood in a technical or restricted sense, but in its ordinary

Meanings of "false charge" and "institution of criminal proceedings."

meaning of a *false accusation* made to *any* authority bound by law to investigate it or to *take any steps in* regard to it, such as "giving information" of it to <sup>"institution of criminal proceedings"</sup> superior authorities; and "institution of criminal proceedings" includes the setting of the criminal law in motion. For the meaning of "false charge" see also the case of *Banti Pande v. R.*, 1930 Cr. cases, 1094 (Pat).

The complaint to the Village Magistrate, in such a case, amounts to a "charge," and is also "an institution of criminal proceedings" within sec. 211 L. P. C. It would be otherwise, if the offence complained of is one in regard to which the information need not, under sec. 45 Cr. P. C., be passed to the higher authority.

66. In summing up the above: It would appear that the word "charge" has not been defined in the <sup>Summing up.</sup> Code. It is more than "giving an information." The word by itself is wide enough to include a charge made to any person but as used in sec. 211, it has been read with the context, *i.e.*, along with the words "institutes or causes to be instituted a criminal proceeding." So read, it has been held to have a restricted meaning. In the Bombay High Court, Ranade, J., went so far as to give it an exclusive and technical meaning, *i.e.*, a meaning such as the words "complaint" and "report" bear in the Criminal Procedure Code. Such "complaints" and "reports" being the steps through which criminal proceedings are instituted. But the Madras High Court is not inclined to interpret the word in a technical or restricted sense. *All the High Courts, however, agree that the "charge" should be made to some person in authority*, such a person, according to Calcutta and Allahabad views, must be a Court or an Officer who has power to investigate and send up for trial, and according to the Oudh view, must be some person who is in a position to get the offender punished. According to the Madras and Patna views, the charge may be made to any authority bound by law to

investigate it or to take any steps in regard to it, such as giving information of it to superior authorities.

It seems, however, that the attempt to define the word with precision is wrong when the Legislature has, for the best of reasons, kept it undefined. To give the word the same sense as the words "institute criminal proceedings" is also erroneous, for, in that case the word would be a repetition of the latter words. In each case, therefore, what does or does not amount to a charge is a question of fact rather than of a legal definition. *The fact is to be determined with reference to the text, viz., whether the accusation was made with the intention of setting the criminal law in motion.* This intention is to be gathered from all the circumstances of the case. The circumstance under which the accusation is made and the language in which it is made and the person to whom it is made being some of the circumstances to be considered for deciding the above question. When the accusation is made before an authority not competent to take any action in the matter, this circumstance is one of the relevant facts to determine the main issue, *viz., whether under that circumstance the intention to set the criminal law in motion can properly be inferred.*

Thus it is not absolutely necessary that a false charge in order to come under sec. 211 I. P. C., should be made only before a Magistrate. It is sufficient, if it is made before a Police Officer with a view to its being brought before a Magistrate.

67. In *R. v. Subbanna Gaundan*, (1862) 1 Mad. H. C. R. 30, the accused preferred a false charge before an Inspector of Police, who disbelieved and refused to act upon it. Scotland, C. J., said, "To constitute the offence of preferring a false charge contemplated in sec. 211 of the Penal Code, it is not necessary that the charge should be before a Magistrate. It is enough if it appear, as it does in the present case, that the charge was deliberately made before an

"Charge" need not necessarily be before a Magistrate.

*Officer of Police, with a view to its being brought before a Magistrate. Of course, a mere random conversation or remark would not amount to a charge."*

The Chief Justice further observed in this case, "It is enough, in a case like the present, if it appear that the charge is not still pending. An indictment for falsely charging could not be sustained if the accusation were entertained and still remained under proper legal inquiry. Here the facts that the Inspector of Police refused to act upon the charge, and that no further step was taken, are enough to bring the case within the sec. 211."

No indictment if the charge remains pending.

False charge before a Police Officer

The Calcutta High Court followed this ruling. See (1865) 4 W. R. Cr. Letter, p. 11. The Allahabad High Court also followed it in *R. v. Abul Hasan*, (1877) I. L. R. 1 All. 497. Similarly, it was held in *Ashraf Ali v. R.*, (1879) I. L. R. 5 Cal. 281, that there is nothing in sec. 211, which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice, and that a false charge made before the Police is, therefore, punishable under this section.

68. It is not necessary that the charge made before the Police Officer should even be recorded.

In *Mallappa Reddi v. R.*, (1903) I. L. R. 27 Mad. 127, the accused had stated to a Police Officer that certain of the prosecution witnesses had stolen his goats. The evidence showed that he intended to set the criminal law in motion against those persons. The statement made by the accused was not reduced to writing in accordance with the requirements of sec. 154 Cr. P. C. It was contended before the High Court that there was no evidence of a false charge, within the meaning of sec. 211.

False charge not reduced to writing under sec. 154 Cr. P.C.

It was held in the above case that the test is,—“did the person who makes the charge intend to set the criminal



law in motion against the person against whom the charge is made." It was further held that (it being  
**Test.** clear from the evidence that the accused did so intend) the fact that the statement made by the accused to the Police Officer had not been reduced to writing in accordance with sec. 154 Cr. P. C., did not prevent the statement made from being a false charge within the meaning of the section.

69. The accusation must, however, be that of an offence, (for the definition of the word "offence," see sec. 40 I. P. C.) and the intention must be to set the criminal law in motion. In *R. v. Raghoo*, (1865) Unrep. Cr. Cases, Bom., 3, the accused made an application to the Magistrate praying him to compel Babaji, the prosecutor, to specifically perform an agreement for the sale of a house by execution of a conveyance or to return the purchase money alleged to have been paid by the accused Babaji. He did not seek by that application to have Babaji punished criminally. Raghoo was convicted under sec. 211 I. P. C. The High Court reversed the conviction as the false charge alleged to have been made does not amount to an offence under sec. 211, observing that the Magistrate ought, under the circumstances, to have referred the accused to the Civil Court.

70. In *R. v. Gapau kom Kusaji*, (1863) 1 Bom. H. C. R. 92, the charge against the prisoner was, that she, with intent to injure Ratanchand Marvadi, made a false charge against him of refusing to give her a receipt on stamped paper for money paid to him by her, knowing that there was no just or lawful ground for such charge. The trying Magistrate convicted the accused. The High Court (Erskine, Newton and Westropp, JJ.) reversed the conviction and sentence, as it did not appear that the accused made a false charge of anything that was an offence at law

It may be stated here that the Stamp Law has been changed

since this decision. (See sec. 64 of Act I of 1879 and sec. 65 of Act II of 1899). Now, any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees or receiving in satisfaction or part-satisfaction of a debt any moveable property exceeding twenty rupees in value, shall, *on demand* by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same, and any person who being required under sec. 30 to give a receipt refuses or neglects to give the same is punishable with fine which may extend to one hundred rupees. (Secs. 30 and 65 of Act II of 1899).

71. Similarly, in *Jagobundhoo Karmakar v. R.*, (1902) I L.R. 30 Cal. 415, the petitioner presented to the Collector as the superior officer of the Court of Wards a complaint as to the conduct of one of the Collector's subordinates, a tehsildar, who, it was alleged, compelled him to go to the office, and kept him there until he paid some money, and the petition ended with the prayer that the Collector should redress the petitioner's grievances. The Collector proceeded to deal with the case as though it was a complaint within the meaning of sec. 4 (h)\* of the Criminal Procedure Code. He did not believe the statement of the petitioner; he did not give the petitioner an opportunity of calling his witnesses to substantiate the statements in his petition to the Collector, but purporting to act judicially, he dismissed the complaint and ordered the prosecution of the petitioner for an offence under sec. 211. The High Court set aside the order, holding that in the first place, a petition to the Collector directed against one of his official inferiors and asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not

\* "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code of Criminal Procedure, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer: See Sec. 4 (h) Cr. P. C.

a "complaint" within sec. 4, cl. (h) of the Criminal Procedure Code ; and that *the Magistrate was not justified in arbitrarily turning a departmental complaint into a criminal complaint.* Moreover, if the Magistrate had been justified in taking the course he did, he would still have been bound, if acting judicially, to have given the petitioner an opportunity of calling his witnesses and proving his allegations. He did not do so. The High Court held that his proceedings were not warranted by law.

Similarly, in *R. v. Kartigowda*, (1894) I. L. R. 19 Bom. 51, certain petitions, said to emanate from the accused were received by Government charging the complainant, a Deputy Collector and first class Magistrate, with bribery and corruption. Government thereupon, ordered Mr. Monteath, Collector and Magistrate, to inquire into the matter, and he enforced the attendance of the accused. In answer to questions put to him, the accused denied having sent any petition to Government, but stated that he had paid a bribe to the complainant to secure the acquittal of his son, who was then on his trial on a charge of theft before him. The Collector and Magistrate examined witnesses and reported the result to Government who permitted the complainant to lodge a complaint against the accused for *defamation*. The trying Magistrate convicted the accused under sec. 211. The Joint Sessions Judge who heard the appeal reversed the conviction. On appeal by Government it was held that sec. 211 had no application. Jardine, J., held that "the accused was brought before Mr. Monteath against his will. He did not make any complaint before that officer ; and though what he stated, in answer to questions put to him, was defamatory, the imputations did not constitute a "false charge" within the meaning of sec. 211, *as he did not intend to set the criminal law in motion.*"

In the same case Ranade, J., said, "Mr. Monteath was, no doubt, District Magistrate, but he was also the departmental head of the service to which the complainant belonged. Mr. Monteath admittedly held the inquiry, under orders of Govern-

ment, as a departmental inquiry, and not as a Magistrate. He enforced the attendance of Karigowda (accused) not by the usual processes, but by writing to the Police. He administered no oath. A more formal inquiry would still have been necessary, and this preliminary investigation was only intended to satisfy Government whether or not there were grounds for ordering such an inquiry. The accused Karigowda made of his own accord no complaint. He even disowned the petition sent in his name to Government. He appears simply to have answered certain questions put to him, in the first instance, by the Chitnis, and later on by Mr. Monteath, who took down his statement for the information of Government."

"Taking all these circumstances into consideration, I do not think that Karigowda can properly be regarded as having made a complaint which could, if shown to be false, bring his act within the purview of sec. 211. At the most, he gave information to a public servant which, under certain circumstances, might furnish ground for a charge under sec. 182. The Magistrate, therefore, who tried the case was not quite correct when he stated that Karigowda's statement was either a false charge or complaint, or nothing at all. Mr. Monteath's inquiry under orders from Government, though not carried on by him as Magistrate, was entrusted to him as a public servant, and information given to him, though not a charge or complaint, might well be an act for which Karigowda could be brought to account under conceivable circumstances." See *ante* ¶ 62; p. 45.

72. In *Ramrao Gurao v. R.*, (1923) 75 L. C. 158; s. c. 24 Cr. L. J. 910 (Nag), it was similarly held:

Application not meant to set the law in motion is no complaint.

that no offence is committed under sec. 211, when there is no intention to set the law in motion against any body. In this case, one Digambar laid information before the Police that a theft had occurred at his house and that he suspected the applicant. Thereupon the Police started their investigation, kept the applicant in custody and ill-treated him. The latter made an application

praying that the inquiry be conducted in the presence of the Magistrate. The Magistrate sent the application to the District Superintendent of Police for report. After the report was received, notice was issued to the applicant to appear before the Magistrate, when the Magistrate examined and cross-examined him at great length and directed the application to be taken on the file as a complaint under sec. 330 I. P. C. Then having held "a preliminary inquiry", he dismissed the complaint under sec. 203 Cr. P. C., and taking proceedings under sec. 476 Cr. P. C., ordered the applicant to be prosecuted under sec. 211 I. P. C. The order was set aside by the Judicial Commissioner's Court holding that the application in question being not a "complaint", within the meaning of the Criminal Procedure Code, no offence was committed. The Court observed, "The application is not made in respect of any offence said to have been committed and it does not ask for an inquiry into it. All that it wants done is that the inquiry into the alleged offence of theft should be made by the officer to whom the application was presented and not by the Police. The application is written by a petition-writer. If it was meant to be a complaint it would be addressed to a Magistrate, would mention the section under which the offence fell, would use the word 'accused' for the persons charged and would call the applicant 'complainant.' The Magistrate himself when it was filed did not treat it as a complaint of an offence. He did not examine the complainant at once, but sent the application to the District Superintendent of Police for report. \* \* \* I am clear that no offence under sec. 211 has been committed as there was no intention to set the law in motion against any body."

73. In *Mahadu v. R.*, (1923) 75 L. C. 543: s. c. 24 Cr.

L. J. 959, (N), Mahadu addressed an application to a Deputy Commissioner, saying that *his application to the Police had not been inquired into* and that he wished the Deputy Commissioner to order the Police to make an inquiry early or

"Complaint" about the delay of the Police in an investigation is not a complaint."

*to make it himself on the spot.* He did not ask for the trial and punishment of the accused. The application was referred to the Police for inquiry and report by the Deputy Commissioner. On receipt of the Police report the District Magistrate ordered prosecution under sec. 211. It was held by the Nagpur Judicial Commissioner's Court that the application was not a "complaint" for the purpose of sec. 211. I. P. C.

74. In *Nga Bon Sñe v. R.*, (1916) 36 I. C. 834 : s. c. 18 Cr. L. J. 2 (Low. Bur), the three appellants were convicted under sec. 211, because of certain statements made by their pleader in the District Magistrate's Court. The pleader was arguing in support of an application to revise the orders of the Township Magistrate fining the three appellants for illicit salt boiling. What the Pleader said under this head was as follows : "It is said that the salt was removed from the shed by the Sub-Inspector and head-man in two boats. 603 viss was brought to Taungup and the balance 800 viss is said to have been sold by the head-man Be Than and his son So Than, who was a witness in the salt cases for the prosecution, to persons of Kyauknimaw village in Kyaung Chaung creek." This has been seized upon by the Sub-Inspector as bringing a false charge of an offence against him. Twomey, J., said, "In my opinion, it cannot be held that any offence was committed under sec. 211. Even if it is taken as established that the Pleader said nothing beyond what he was instructed to say, the passage contains no specific charge. It merely mentions a rumour that there was a balance of 800 viss of salt removed by the Sub-Inspector and the head-man. It was left to be inferred, no doubt, that the Sub-Inspector and the head-man were rumoured to have done away with the 800 viss in some unlawful manner. *But sec. 211 requires a good deal more than a mere suggestion of an inference. There must be a charge of some specific offence made with the intention and object of setting the criminal law in motion against the*

**Pleader's statement as the basis of false charge against his client.**

*man who is said to have committed the offence.* Moreover, the circumstances in which the statement was made have to be considered. Here the three applicants were merely trying to obtain the reversal of their convictions in the salt boiling case. *There was no setting of the law in motion against the Sub-Inspector and no attempt to set it in motion.* The most that can be said is that the applicants' Pleader in addressing the Court on behalf of his clients in the salt boiling revision case imputed that the Sub-Inspector had committed some not specified offence with reference to part of the salt that had been seized. Having regard to the circumstances in which the words were spoken and the form of words used, it is, in my opinion, impossible to sustain the convictions of the appellants."

75. So, a statement not made with a view to make a charge but treated by the Magistrate or the Police Officer as such cannot come within the section,

**Examination of the complainant by the Police after a complaint to the Court, no "charge" before the Police.**

In the case of *Ghaslwan Singh v. R.*, (1926) 96 I. C. 870: s. c. 27 Cr. L. J. 1014 (All), a person deliberately made a complaint in Court instead of going to the Police on the ground that he expected no satisfaction from the Police, but he is nevertheless, after such complaint, examined by the Sub-Inspector and in answer to his questions stated that certain criminal offence had been committed by certain persons, the High Court said that it was impossible to say that, when he made his statement to the Sub-Inspector, he was *moving the Sub-Inspector to do anything or that he was charging any person of any offence.*

76. When a statement is made to a Magistrate extra-judicially and without any intention or desire that it should be taken as a complaint, but merely in reply to a question asked by the Magistrate, it was held in *R. v. Bhole Singh*, (1915) I-L. R. 38 All. 32, that it was wrong to treat the statement as a complaint. There one Paras Ram, a village head-man, filed a petition before the District Magistrate, stating

**A statement to a Magistrate not meant to be a complaint or "charge" or information.**

that he wished to resign his post as village head-man as he was too old and unable to do his work. The District Magistrate apparently doubted the correctness of the reason given and questioned the man. In reply to questions put to him Paras Ram stated that the Police of a certain Police Station were holding an investigation of a dacoity case and in the course of which they were forcing a large number of people to pay money to them ; and that he was afraid of getting into trouble through this matter and he therefore, wished to resign. The District Magistrate treated this as a complaint and recorded the evidence of Paras Ram on oath and summoned the persons named by Paras Ram and examined them, and then sent the papers to the Superintendent of Police who made inquiries and reported that the allegations of extortion were false, and suggested that the persons who had made them and reported them, should be criminally prosecuted. Thereupon Paras Ram was prosecuted under sec. 211, and others under sec. 193 I. P. C. It was held that Paras Ram made no complaint ; and he did not intend to make any complaint, and that having regard to the definition of "complaint" it was not open to the District Magistrate to treat the petition and statement of Paras Ram as a complaint whether Paras Ram liked or not. He nowhere asked for the witnesses to be summoned. The High Court was of opinion that there was no complaint within the true meaning of the word. The action of the Magistrate was not action taken under sec. 202 Cr. P.C. It was apparently an executive action in the form of a departmental inquiry. There was no judicial proceeding before the District Magistrate and therefore, he had no power to take action under sec. 476 Cr. P. C.

77. A statement made under sec. 162 Cr. P. C., in answer to questions put by a Police Officer making an investigation under sec. 161 Cr. P. C., cannot be made the basis of a prosecution under sec. 211 I. P. C. See *Chinna Ramana*

\* For the meaning of the word "complaint," see ante p. 51, (foot note) : and for the meaning of the word "Police report" see Post ¶ 142, et seq.



*Gowd v. R.*, (1908) 1 L. R. 31 Mad. 506; *ante* ¶ 34, p. 22-25.

78. *In re Mallala Obiah*. (1917) 19 Cr. L. J. 38 (M), it was held that where, in the original complaint presented to the Police Officer, there was no definite accusation against a person, it cannot, in order to bring the case under sec. 211, be supplemented by a supplementary statement containing specific averments made to the Sub-Inspector in the course of an investigation, for, the statement taken from the informant in the course of Sub-Inspector's investigation is a statement falling under sec. 162 Cr. P. C., and it cannot be used against him at the trial.

79. *In Solaimuthu Pillai v. Murugath Moopan*, (1915) 28 L. C. 999 : s. c. 16 Cr. L. J. 423 (M), during the inquiry under sec. 202 Cr. P. C., the suggestion was made to the Police that the Police should search certain houses, because there was reason to suspect the conduct of the owners of those houses. It was held that this does not amount to a "charge" within the meaning of sec. 211 I. P. C.

80. The expression of a suspicion that a person may have committed an offence does not amount to the institution of a criminal charge against him, where the Police are only left to act upon the suspicion and follow up the clue, as they might or might not think fit. Under sec. 211 there must be a definite accusation before a person can be said to have either charged or instituted criminal proceedings against another. *In re Mallala*, (1917) 19 Cr. L. J. 38 : s. c. 42 L. C. 998 (M), following another Madras ruling *Sawminatha Thevan v. R.*, (1912) 14 L. C. 767 : s. c. 13 Cr. L. J. 303.

The same view has been taken by the Lahore High Court in *Abdul Ghafur v. R.*, (1924) 1 L. R. 6 Lah. 28. See *post* ¶ 82 and 109.

No specific charge against anybody in the first information, — subsequent charge during investigation.

Statement of suspicion, — not a charge.

Suggestion to the Police during inquiry under sec. 202 Cr. P. C., is not a charge.

Expression of suspicion is not making a charge in a Criminal Proceeding.

81. In the case of *Bramanund Bhuttacharjee*, (1881) 8 C.

Report of suspicion intended to furnish a clue for investigation is no charge or instituting a criminal proceeding.

L. R. 233, the prisoner laid a complaint at the thana stating that a dacoity had been committed in his house by a gang of 30 or 35 persons whom *he was unable to recognize* in the dark, and then added, "Mohesh Roy was one of the dacoits." I *suspect* him because he is my enemy." It was found as a fact that there was a dacoity. Pontifex, J., said, "If a dacoity was committed, I am of opinion that the appellant ought to be acquitted, because the manner in which he mentioned the name of Mohesh Roy to the Police would not thus amount to a false charge. It would amount *only to providing the Police with a possible clue for investigating the matter*, which they might or might not follow up as they considered fit."

Mitter, J., said, "If, therefore, there was a dacoity, the evidence, in my opinion, is not sufficient to prove that the appellant falsely accused Mohesh Roy, *knowing that there was no just ground for the accusation.*"

In *Sawminatha Thevan v. R.*, (1912) 14 I. C. 767; s. c. 13 Cr. L. J. 303, (M), the accused merely stated that he suspected the complainant of theft and mentioned the facts on which his suspicion was based. The High Court observed that "sec. 211 I. P. C., requires that there should be an *institution of a criminal proceeding* by the accused against the complainant. *The expression of suspicion did not amount to the institution of a criminal charge.* The Police, no doubt, acted upon his suspicion and took steps to prosecute the complainant. The accused cannot be held responsible for this."

The same view was taken in *Mallala Obiah*, (1917) 42 I. C. 998; s. c. 19 Cr. L. J. 38 (M), where in the complaint to the Village Magistrate there was no direct accusation against one Ramudu, but it was stated, that he had suspicion against Ramudu because the latter saw the place where the sale deeds were, and came twice to the home before the deeds were stolen.

At the time of the investigation by the Police, he told the Sub-Inspector that the deeds would be found if Ramudu's house were searched. The Sessions Judge was of opinion that this statement might be said constructively to have falsely charged Ramudu with the offence of theft. The High Court following *Sawminatha's* case held that it was not a "criminal charge" and the Police were left to act upon the suspicion and follow up the clue, as they might or might not think fit.

82. In *R. v. Mathura Prasad*, (1917) I. L. R. 39 All. 715 : 15 A. L. J. 767 ; 18 Cr. L. J. 1017, the accused reported to the Police Officer, "I find there has been a theft, I suspect the persons named, and I want an inquiry to be made." Walsh, J., said that it would be **Statement of suspicion—not a charge.** straining the language to hold that it amounts to a charge. If it was false then it was a false report made to the officer under sec. 182 I. P. C. See *post* ¶ 109.

In *Abdul Ghafur v. R.*, (1924) I. L. R. 6 Lah. 28, the accused Abdul Ghafur made a report to the Police that his buffalo had been poisoned and that he suspected Ghulam Rasul and Abdul Rauf of having administered poison. The Police reported there was no case of poisoning and the case was struck off. Ghulam Rasul then brought a complaint against Abdul Ghafur under sec. 211 I. P. C. He was convicted by the Magistrate and the conviction was upheld by the Sessions Judge. The High Court in revision following *Mathura Prasad's* case and *Sawminatha Thevar's* case already noticed, acquitted the accused holding that in this case no criminal proceedings were instituted against any person and it cannot be said that any person was charged with having committed any offence. See *ante* ¶ 80, p. 58.

83. Walsh, Acting C. J., with Ryves, J., in deciding the case of *R. v. Kasbi Ram*, (1924) I. L. R. 46 All. 906, 911, said, **When a "report" stops and "charge" begins.** "But, in substance, there ought not to be any real difficulty in deciding the question where a report stops and a charge begins, and my brother and I, agreeing in substance with the view which I

took in the case which I decided, *Matfiura Prasad v. R.*, have agreed upon the following formula which, in our view in substance, not necessarily in every term or expression, correctly states the dividing line between the two classes of acts :—

“If the complainant confines himself to reporting what he knows of the facts, stating his suspicions, and leaving the matter to be further investigated by the Police, or leaving the Police to take such course as they think right in the performance of their duty, he may be making a report, but he is not making a charge. But if he takes further step, without waiting for any official investigation, of definitely alleging his belief in the guilt of a specified person, and *his desire that the specified person be proceeded against in Court*, that act of his, whether verbal or written, if made to an officer of the law authorized to initiate proceedings based upon the complainant's statement, whether amounting to an expression of the complainant's belief in the guilt of the specified person, or his desire that Court proceedings be taken against him, amounts to making a “charge.”

“Applying that to the facts to this case, what happened was, that these three people, (Kashi Ram and two other people) having apparently reason to suspect the other three of the theft, approached the Police and desired that a search be made. *Up to that time they had made no charge.* Search was made in their presence, and an attractive article of clothing was identified by Kashi Ram as being unlawfully in the box of Miyan Jan, the present complainant. He *identified it and indicated to the Police Officer that Miyan Jan was guilty, either of having stolen or wrongfully received it knowing it to have been stolen.* That, in our view, *amounted to a charge.*”

In the opinion of the High Court the Magistrate was right, on the complaint of Miyan Jan, in formulating a charge against Kashi Ram of having made that charge, assuming it to have been false to Kashi Ram's knowledge. See the case

of *Bholu v. Punaji*, (1927) 105 L. C. 454 : s. c. 28 Cr. L. J. 934 (Nag).

84. In *R. v. Huncoman Lal*, (1872) 19 W. R. Cr. 5, Jackson, J., said, "It appears to me that if a **Report of something more than suspicion.** man, especially one interested in the matter, or having a certain official responsibility (and the prisoner is both), says to a Police Officer, 'A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X,' and follows up that statement by an application to have A's house searched, he has in truth preferred a charge against X. The prisoner did all these."

Jackson, J., added, "If this were not so, an artful mischief-maker might easily bring innocent persons into trouble, and avoid all unpleasant consequences to himself."

85. In *Parmeshwar Lal v. R.*, (1925) 1 L. L. R. 4 Pat. 472, the appellant laid an information before the **Plea of mistake of fact.** Police Officer charging one Munsaf Ram with having set fire to a hut belonging to his master. The case was investigated and was found to be false and afterwards he was convicted under sec. 211, I. P. C. It was contended before the High Court that at most the information is a mistake of fact and does not amount to a false information within the meaning of sec. 211, Penal Code. The High Court observed, "If the appellant had said to the Police that he suspected Munsaf Ram and if he had not deliberately charged Munsaf Ram with having set fire to the hut, there might have been some substance in this plea, but here it is clear that the *appellants intention was not merely that the Police should follow up a clue but that the Police should put Munsaf Ram on his trial.* It was clearly the appellant's intention to set the criminal law in motion against Munsaf Ram and to injure Ramsunder and Jagat Prasad."

86. Where in his information to the Police, the **Report of "suspicion" when no occurrence took place, is indictable.** petitioner did not name any one as the actual offender but what he did was to report that a burglary or theft had taken place in his house and that

he suspected that the opposite party had instigated the same, it was held that the order for prosecution of the petitioner under sec. 211, was justified, as it was found by the Magistrate that as a matter of fact no *burglary or theft had at all taken place* as alleged by the petitioner. *Brojabashi Panda v. R.*, (1908) 13 C. W. N. 398.

87. It was held in *Chenna Malli Gowda v. R.*, (1903) L. L. R. 27 Mad. 129, that an accusation of murder made to a Village Magistrate (who, under sec. 13 of Regulation XI of 1816, has authority to arrest any person whom he suspects of having committed the murder of a person whose body is found within his jurisdiction) is a "charge" within the meaning of sec. 211 I. P. C., even though it does not amount to the institution of criminal proceedings and even though no criminal proceedings follow it owing to the Police on investigation referring the charge as false.

88. In *The Sessions Judge of Tinnevely Division, v. Sivan Chetti*, (1909) L. L. R. 32 Mad. 258 (F. B.), decided by three Judges of the Madras High Court, two Judges held that when a false complaint is made to a Village Munsif of an offence of dacoity, and the information is one which under sec. 45 Cr. P. C., the Village Munsif is bound to pass on to the higher constituted authorities, will amount to an offence under sec. 211 I. P. C. The case of *Chinna Ramana Gowd v. R.*, (1908) L. L. R. 31 Mad. 506, on this point was dissented from. See *ante* ¶ 65, p. 46.

89. Section 211 is applicable not only to private individuals but also to public servants such as Police Officers affecting to act in execution of their office. The point arose in the case of *Nabodeep Chunder Sirkar*, (1869) 11 W. R. Cr. 2. There it was decided that a Police Officer who maliciously commences criminal proceedings against any person, or charges such person with an offence, or

Accusation of murder before a Village Magistrate, is a "charge."

False complaint to a Village Munsif is an offence.

Police Officers may be charged under sec. 211, when he maliciously commences criminal proceedings.

causes him to be charged falsely, not only commits the offence under sec. 211, but commits it in a very aggravated form.

In *R. v. Rhedox Nathi Biswas*, (1865) 2 W. R. Cr. 44, 45, the prisoner a Head Constable, sent in reports to his immediate superiors that Kummul Ram and Mochee Ram were in the habit of dealing in stolen goods. The result of these reports was a criminal information before the Deputy Magistrate, who, however, acquitted Kummul Ram and Mochee Ram and sent up their accuser to the Sessions, under sec. 211 I. P. C., and the Jury found the prisoner guilty.

It was urged before the High Court in appeal that the prisoner was a Subordinate Police Officer, and acted in obedience to superior orders, and ought not to be held responsible. On this, Glover, J., observed that "the criminal information was laid before the Deputy Magistrate entirely on the prisoner's representation to his Inspector. Had it not been for his reports to that official, the charge would never have been made ; and the prisoner, although a subordinate to all intents and purposes, was the actual and personal originator of the charge, and cannot shift the responsibility." Glover, J., was of opinion that "the Sessions Judge was right in looking to the prisoner alone. If the mere fact of being in a subordinate position, is to shield a man from the consequences of official acts originated by himself, no one will be safe from false and malicious charges". *But it must be distinctly shown that the Police Officer preferred the charge mala fide.*

The case of *R. v. Muthoorapershad Panday*, (1865) 2 W. R. Cr. 9, is interesting and instructive. There an information was lodged before the Police on the 15th August that one Ramsurun was killed. The Police Inspector Muthoorapershad made his appearance the next day, and commenced his inquiries. Two witnesses gave evidence that they saw some of the accused kill Ramsurun. The case was sent up by Muthoorapershad for trial. The Deputy Commissioner ordered for further inquiry, pending which Ramsurun, the man alleged to have been murdered, unexpectedly made his

appearance. The tables were now turned, and the parties who had sworn to having seen the accused murder Ramsurun, together with the original informants at the thana, the Police Inspector and others were tried and convicted. In dealing with this case on appeal, Glover, J., said, "Now, the first thing that strikes me in going into the case against Muthoorapershad, is the extreme *prima facie* improbability of the prisoner having acted as he did, knowing that the charge of murder was false. According to the evidence, he went heart and soul into the matter, wrote numbers of reports, bullied men and women whom he thought knew nothing of the matter, beat and otherwise maltreated those whom he afterwards sent in as witnesses, and all this he did, knowing that the man Ramsurun was not only not dead, but was only distant a few miles ; knowing, moreover, that he might be expected at any moment to make his appearance, and confound the Police Officer's machinations."

"That Muthoorapershad commenced the inquiry, believing the story of Ramsurun's death, is admitted ; and to bring the present charges home to him, it must be shown on such evidence as to leave no reasonable doubt on the mind that he almost immediately discovered the falsity of the first report, and yet entered into a scheme with others to bolster up its authenticity for the purpose of bringing a false charge against persons with whom he had no acquaintance and no enmity. *It is not enough to prove that the Police Inspector acted carelessly or rashly, or even with criminal neglect of his duty : It must be distinctly shown that, in preferring the charge of murder, he did it mala fide.*" •

"Now, on looking at the evidence, although I find ample proof of Muthoorapershad's folly, ignorance, and worse, there is nothing in it which to my mind proves him guilty of the heavier offence ; that he exerted himself to collect evidence in all sorts of ways ; that he ill-treated witnesses till they promised to depose as he wished ; that he stupidly allowed himself to be altogether led by the statements of the other



prisoners, is clear. He showed himself utterly unworthy of the post he held, to be ignorant, tyrannical, and in short almost everything that a Police Officer should not have been ; but all this does not prove that, when he made the charge against Purushunt and others, he knew of Ramsurun's being alive, or that, when he sent in his report, he did so, knowing it to be false. His conduct appears to me to have been that of an unscrupulous man, eager to earn a name for smartness and capacity and caring nothing how he managed so as he got up a good case. I might even go so far as to admit, for the sake of argument, that he knew that the witnesses whom he maltreated were ignorant of the murder, and that notwithstanding that he tried to make them depose as he wished ; but even this is no proof that the Inspector himself knew of the falsity of the charge. He might be found guilty generally of fabricating evidence but not of the crime of which he is charged."

"In cases like the present, the knowledge that a charge is a false one, must be inferred from the circumstances, judged of according to the facts as they were known, or supposed to be, when the charge was made. Now, there can be no doubt that, when the man Julika went to the thana to report, the Police Inspector believed the man's story ; and there was nothing in the after and more complete inquiry to make him *necessarily* think that he had been deceived. There were rumours that Ramsurun had run away, but there were also rumours that he had been murdered, and as the recusant witnesses ended in acknowledging the latter fact to be true, it can hardly be wondered at if Muthoórapershad thought it true likewise ; it must not be forgotten that the prisoner would, from his antecedents, be naturally incline to follow out what used to be a very common method of obtaining evidence, and to care little how he got the testimony he wanted, provided that he did get it."

"With regard to the human bones, &c., on which considerable stress has been laid by the Judicial Commissioner, I do not see that the fact proves anything. It would not be

easy for a non-professional man to distinguish between male and female bones ; but granting the prisoner's knowledge, it would still be only a proof of his unfitness for office : he might still have believed that Ramsurun had been murdered, although he knew that the bones found were not his bones."

"The prisoner's counsel has dwelt at considerable length on services rendered by Muthoorapershad, and on the fact of his having saved European life during the mutiny. But this is beside the question ; and the only thing, perhaps, deducible from it, is that the prisoner, from his antecedents and character, was altogether unfitted for the post of Police Inspector, and might be supposed to have fallen an easy dupe to Bengalee intrigue."

"Taking, however, all the evidence into consideration, I think that the presumptions against the prisoner (and all the evidence against him is presumptive) are more than neutralized by those in his favour ; and that, taking the most unfavorable view of his case, he is entitled to the benefit of the doubt."

#### B.—INSTITUTING A CRIMINAL PROCEEDING.

90. By "criminal proceedings" in sec. 211 of the Code is meant criminal proceedings intended to be taken in Court. In *re Mallala Obiah*, (1917) 42 I. C. 998 : s. c. 19 Cr. L. J. 38.

But the institution of the criminal proceedings need not be in Court by the accused himself. In *Muhammad Hayat v. R.*, (1921) 65 I. C. 434 : s. c. 23 Cr. L. J. 82, the Lahore High Court following *Sultan v. R.*, 3 P. R. 1888 Cr., held that the term "institution" in sec. 211 means the institution either by the accused himself, or by the Police or others in consequence of the accused's action, in some Criminal Court.

It was held in *R. v. Bonomally Sohai*, (1886) 5 W. R. Cr. 32, that to prefer a complaint to the Police in respect of an offence which they are competent to deal with, and thereby set the Police in motion, is to institute a criminal

proceeding within the meaning of sec. 211. Whether a false charge is made, or a false criminal proceeding is instituted, it must be, in order to come under the section, *done with the knowledge that there was no just or lawful grounds for such proceeding*. See *R. v. Karigowda*, ante ¶162, p. 45.

91. In *R. v. Chidda*, (1871) 3 N. W P., H. C. R., 327, it was pointed out that a person may, in good faith, institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, *institute criminal proceedings against him believing there are just and lawful grounds for them*, but in neither case has he committed an offence under sec. 211, I. P. C. To constitute this offence it must be shown that the person instituting criminal proceedings, knew there was no just or lawful ground for 'such proceedings. The averment that the accused knew that there were no lawful grounds for the charge instituted is a most material one.

**"Charge" instituted in good faith.**

**Essence as ground for believing the offence charged to be true.**

**No offence—if the charge is made believing the information to be true (ultimately found to be false).**

92. So when a man believing his wife's statement made a false charge against any person, he has not committed an offence under this section; see *Mirza Hassan Mirza v. Mahbubani* (1913) 18 C. W. N. 391.

93. In *R. v. Pran Kissen Ibid*, (1866) 6 W. R. Cr. 15, the prisoner was charged, under sec. 211, with having instituted a criminal prosecution against one Kurpah Pundit on a false charge of having committed dacoity, knowing that there was no just or lawful ground for such a proceeding. The High Court said, "*It is not enough, and not a sufficient ground for charging under sec. 211 of the Indian Penal Code, that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence or a statement which is not or ought not to be sufficient to satisfy a reasonable mind.*"

**Rashness in making a charge believed to be true.**

*"However rashly he may act in receiving and believing*

*such statement, — if in fact and truth he does not know, at the time he makes the complaint, that there are no just or lawful grounds for making the complaint, — he cannot be convicted of making a false charge under the above section."*

The conviction in this case was upheld on the ground that there was nothing whatever which led to the inference that the prisoner was misled by the story told by the witnesses called by him. See *R. v. Ram Krishna*, (1906) 5 Cr. L. J. 105 : s. c. I. L. R. 13 Bom. 204, *post* ¶ 119.

#### C.— APPLICATION OF THE SECOND PART OF SEC. 211 I. P. C.

94. It will be observed that in providing the punishment in certain cases in the second part of the **Second part of sec. 211 I. P. C.** section, the expression used is "if such criminal proceeding be instituted," although the first part of the section mentions two expressions, *viz.*, "institutes criminal proceedings" and "falsely charges". A question has consequently arisen as to whether the punishment provided for in the second part of the section can be given where only a false charge of offences punishable with death, transportation, etc., is made, say for instance, before the Police without the actual institution of the criminal proceeding in Court.

95. In *R. v. Pitam Rai*, (1882) I. L. R. 5 All. 215, it was held that the actual institution of criminal proceedings on a false charge is essential to the application of the latter part of sec. 211, and and if a person only makes a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards." In construing the section, Mahmood, J., said, "But that section is divided into two distinct parts. The first part relates to two matters, (i) *institution of false criminal proceedings*, (ii) *falsely charging any person with having committed an*

**Views of the High Courts differ :**

**Allahabad High Court.**

*offence.* All cases of false criminal proceedings and of false charges fall under the first part of the section, except those specified in the second part of the section. The purview of the second part of the section is, however, limited to *institution of criminal proceedings* on a false charge, and does not include the making of a false charge, which falls short of, the institution of criminal proceedings. Penal statutes must be strictly construed, and on consideration of the language of the sec. 211, Indian Penal Code, I am of opinion that the latter part of that section has no reference to false charges, but to cases in which such false charge is followed by, and is made the basis of, the institution of criminal proceedings. The language of the statute is :—‘*If such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, &c.*’ These words, compared with the phraseology of the first part of the section, leave no doubt on my mind that the *actual institution of criminal proceedings* on a false charge is essential to the application of the latter part of sec. 211, I. P. C., and that if the offence of the accused stops at making a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to ‘an offence punishable with death, transportation for life, or imprisonment for seven years or upwards.’ The case was followed by *R. v. Parahu*, (1883) I. L. R. 5 All. 598, and *R. v. Bisfeshar*, (1893) I. L. R. 16 All. 124.

In *Isfiri alias Hatim Ali v. Muhammad Hadi*, (1902) I. L. R. 24 All. 368, 370, the High Court observed that “a prosecution does not commence until proceedings are initiated by a Magistrate taking cognizance of an offence under the Code of Criminal Procedure. Part V of that Code deals with ‘information to the Police and their powers to investigate.’ Part VI provides for ‘proceedings in prosecutions,’ and Chapter XV—B, which comes under that part, is headed ‘Conditions requisite for initiation of proceedings.’ The first section under that head is

sec. 190, which declares the materials upon which a Magistrate may take cognizance of an offence. It is thus evident that the Court makes a distinction between the giving of information to the Police and the initiation of criminal proceedings. A similar distinction is made in sec. 211 of the Indian Penal Code, between the institution of criminal proceedings and the making of a charge to the Police — a distinction which was recognised by this Court in *R. v. Bisheshar*, (1893) I. L. R. 16 All. 124. The laying of an information before the Police cannot, therefore, be held to be the commencement of a criminal prosecution." This was a civil suit and the construction of the section 211 was necessary in this case.

96. In Bengal, the point came up before the Full Bench in *Karim Bukshi v. R.*, (1888) I. L. R. 17 Cal. 574. The question before it was whether the latter part of the sec. 211, applies to cases in which complaint has been made to the Police of an offence falling within the description given, and into which the Police are by law authorised to inquire. It will be seen that the expressions "institutes criminal proceedings", and "falsely charges" occur in the first part of the section, and only the one expression "such criminal proceedings be instituted" in the latter.

Wilson, J., who delivered the judgment of the Full Bench said, "I do not think we are to suppose that the Legislature meant the phrases to be mutually exclusive in meaning, so that the instituting of criminal proceedings must be by something which is not a charge, and a charge must be something which is not the institution of criminal proceedings. This cannot, I think, be for two reasons: *First*, because there is no mode by which a private accuser can institute criminal proceedings except by making a charge; and if he does not do it by the charge, he never does it at all, to whatever length the proceedings may go. And *secondly*, because the last part of the section speaks of "proceedings instituted on a false charge."

"It is not difficult to see various classes of cases which either do or probably may fall under one of the expressions used and not under the other, and which the Legislature may well have had in view when it used both." He pointed out that proceedings under sec. 107 Cr. P. C., or 109 Cr. P. C., are apparently criminal proceedings, but they do not necessarily involve a charge of any offence. On the other hand, a charge to the Police of a non-cognizable offence may very possibly be a charge within the meaning of the section, but could hardly be called the institution of criminal proceedings. *So a charge made to the Judge of a Civil Court, or to public officers of other kinds, in order to obtain sanction (now a "complaint") to prosecute may well be a charge, but is not the institution of criminal proceedings.* Accordingly, it was held by the Full Bench that *"a man who sets the criminal law in motion by making a false charge to the Police of a cognizable offence, institutes criminal proceedings within the meaning of sec. 211 I. P. C., and that if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided."* (p. 579).

97. The Patna High Court in *Parmeshwar Lal v. R.*, (1925) I. L. R. 4 Pat. 472, dissenting from the construction given by the Allahabad High Court in *R. v. Bisheshwar*, (1893) I. L. R. 16 All. 124, is of opinion that the decision of the Full Bench in *Karim Buksh's* case contains a correct statement of the law *viz.*, a charge laid before the Police is a criminal proceeding within the meaning of sec. 211, I. P. C.

98. This construction has been adopted by the Madras High Court in *R. v. Nanjunda Rau*, (1896) I. L. R. 20 Mad. 79, in which a false charge of dacoity was made to the Police, who, after some investigation, referred it to the Magistrate as false, and the Magistrate ordered the charge to be dismissed without taking any action against the parties implicated. The person who preferred the charge was now tried under sec. 211.

I. P. C., and convicted and sentenced by the Sessions Judge to four years' rigorous imprisonment.

In appeal it was urged that though the charge to the Police might have been false, yet, as they referred the charge to the Magistrate as false, and as the Magistrate ordered the charge to be dismissed as false without taking any action against the accused, there was no 'institution of criminal proceedings' within the meaning of sec. 211, and the offence was therefore only punishable with a maximum of two years' imprisonment under the first part of the section, instead of with seven years' imprisonment under the second part of the section. The High Court said, "We are unable to find any warrant for holding that the words 'the institution of criminal proceedings' should be limited to the bringing of a charge before the Magistrate, or to action by the Magistrate or Police against the person charged. It seems to us that when, as in this case, a charge of a cognizable offence is made to the Police against a specified person, criminal proceedings within the meaning of the section have been instituted just as much as if the charge had been made before the Magistrate. It is argued that, when a charge is preferred to the Police, it merely sets them on inquiry, and they may find the charge to be false and refuse to proceed with the charge without the accused being even aware that any complaint has been made against him ; but precisely the same may be the case when a complaint is made to a Magistrate. He is not bound to take any action against the person accused. He may refer the charge to the Police for inquiry, and on receipt of their report may refuse to proceed or take any action against the accused person. In such a case the accused might be unaware that any complaint had ever been made, yet it could hardly be contended that the complaint to the Magistrate did not amount to 'the institution of criminal proceedings' within the meaning of the section." So, according to the Madras High Court the view taken in *Karim Bukshi v. R.*, (1888) L. L. R. 17 Cal. 574, is correct.



99. There has been no ruling of the Bombay High Court on this point. The point was left undecided in *R. v. Jijibhai Govind*, (1896) 1 L. R. 22 Bom. 596.

#### D.—ABETMENT OF AN OFFENCE UNDER SEC. 211 I. P. C.

100. An offence of abetment always constitutes a substantive offence and it may be so charged. **Four things are considered in determining criminality of abettor**—Generally speaking four things are considered in determining the criminality of the abettor :

(1) what act he had abetted, and (2) with what intention, and (3) what act was committed, and (4) with what intention. But when an offence of abetment under sec. 211 I. P. C., is committed, it is also to be proved that such offence was abetted knowing that there was no just or lawful ground for such proceeding or charge. In order to be guilty of an offence of abetment under sec. 211, I. P. C., it is therefore, necessary that the information is false to the knowledge of the abettor. Thus 'giving an advice to lodge an information to the Police knowing the information to be false constitutes an abetment of an offence under sec. 211 I. P. C. For the definition of abetment see *ante* ¶. 54, p. 38.

In the course of a quarrel between Ram Logan and Bandhan, Topsi who was sitting near, took up Ram Logan's part and struck Bandhan whereupon Bandhan fled. Ram Logan then directed Topsi to lodge an information in the thana to the effect that Bandhan had stolen a bag of money of Topsi's and made off with it. Topsi laid the information. The Calcutta High Court held in the case of *Ram Logan Lal v. R.*, (1903) 7 C. W. N. 556, that Ram Logan being present at the time when the theft was alleged to have been committed, the story, if false, was false to Ram Logan's knowledge, and that having made Topsi lodge an information which he knew to be false, Ram Logan was guilty of abetting an offence under sec. 211 I. P. C.

101. There being no abetment of an offence after it has been committed, a person cannot be convicted of abetting the offence of instituting a false charge on evidence which shows only that he gave evidence in support of a charge found to be false. *In re Jugut Mohini Dassee*, (1881) 10 C. L. R. 4. The same view was taken in *R. v. Ram Panda*, (1872) 9 B. L. R. App. 16, *sub nomine R. v. Paun Pandah*, (1872) 18 W. R. Cr. 28.

Regarding the trial of abetment of an offence under sec. 211, see Chapter XIV, *post* ¶ 405, *et seq.*

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## CHAPTER V.

### Prosecution of cases partly true and partly false.

102. In *Giridhari Naik v. R.*, (1901) 5 C. W. N. 727, a question arose whether considering the fact that a portion of the complainant's story was found to be true, a charge either under sec. 211, or under sec. 182 I. P. C., can be maintained. In this case Giridhari Naik made a complaint to the Police to the effect that one Bechoo Kurmi had used abusive language towards him calculated to provoke a breach of the peace, had assaulted him, and committed theft of a brass badge and a *chuddar* from his person. The Police after investigation came to the conclusion that the charge of abuse was true and the charges of assault and theft were false. One of the questions submitted to the Hon'ble High Court was whether considering the fact that a portion of the complainant's story was found to be true, a charge either under sec. 211, or under sec. 182 I. P. C., can be maintained against him. *It will be seen that Police would not have investigated into the case if there was no report of the cognizable offence, namely, the theft.* The High Court after quoting sec. 211, says, "In the present case, the complaint was made at the thana with the object of *setting the Police in motion*. It seems to us *difficult to lay down any precise rule or principle* in respect of the question upon which we are called to express an opinion. It appears to us that *each case must depend upon its own circumstances*, and, what is to be looked to, is the nature of the charge. The section, undoubtedly, contemplates a charge, which is indivisible in its nature, and, therefore, what is to be considered is the nature of the complaint or charge made by the accused : In other words, whether the complaint is substantially true and what is

false is a mere fringe to the complaint, or whether the substantial complaint is false and what is true is a mere fringe or in other words a mere accessory circumstance. This is a matter entirely for the consideration of the Court which has to determine the question."

In the reference made by the Presidency Magistrate to the High Court, he referred to the case of *Mukht Bewa v. Jhotu Santra*, (1896) 1 L. R. 24 Cal. 53, in which the accused was charged under secs. 352 and 379 I. P. C., but convicted under sec. 352, being discharged under sec. 379; the Magistrate ordered the complainant to pay compensation for bringing a frivolous and vexatious charge under sec. 560 Cr. P. C. The High Court set aside the order for paying compensation on the ground that sec. 560 Cr. P. C., could only operate when there was a complete discharge or acquittal. The High Court in *Giridhari Naik's* case observed, "The case referred to by the learned Presidency Magistrate only declares that where a portion of a case is substantially true, it can hardly be said that it is frivolous or vexatious so as to entitle the Magistrate to award compensation. *An analogy of that case may assist that Magistrate or the Judge in dealing with prosecutions under sec. 211 I. P. C., to determine the character of the real charge preferred by the present accused under sec. 211, whether it is substantially true or whether it is substantially false.*

In dealing with such cases it should be remembered that even in true cases there is often exaggeration and even fabrication of evidence. See *Ali Afmal v. R.*, (1921) 62 I. C. 327 : s. c. 22 Cr. L. J. 503 (L) ; *post* ¶ 391.

103. In some cases it may happen that an informant may bring several charges of cognizable offences in one information lodged before a public servant, e. g., offences of house breaking, theft, and in voluntarily causing grievous hurt alleged to have been committed in the same transaction. If one of such cognizable offences is found to be false, it can hardly

Sec. 182 in relation to cognizable offences when charge of one such offence is false.

be said that the Informant committed an offence under sec. 182 I. P. C., by moving the public servant quite unnecessarily as to bring the Informant amenable to that section.

104. A complaint for prosecution under sec. 211, should only be made when the case is a deliberately false one; and where the case is not false in substance, but is bolstered up by false evidence, the proper section to make a complaint is section 196 I. P. C. [See the case of *Bholanath Dutt v. Hari Mohan Dutt*, (1907) 7 C. L. J. 169]. In this case Bholanath Dutt instituted a case against his brother, charging him with having beaten him on the head with a *pitna*, or beater. The *pitna* bore some red stains; and the petitioner said that these were the stains of blood which fell from his head. The Police Surgeon said that the stains were not blood stains. The Chemical Examiner also said that there were no traces of blood on the *pitna*. Under the old law the Presidency Magistrate sanctioned the prosecution of Bholanath Dutt under secs. 211 and 196, Indian Penal Code. The High Court held that there was sufficient evidence to justify the prosecution under sec. 196 I. P. C., but held that the evidence was not sufficient to justify his prosecution under sec. 211 I. P. C., because, it did not appear from the judgment of the Magistrate that the case was a deliberately false one, although it seemed *prima facie* to have been bolstered up with false evidence.

105. In the case of *R. v. Mindat Lall*, (1883) A. W. N. 39, the appellant made an accusation against K. S., with having assaulted him and knocked out his tooth. K. S., being acquitted, charged the appellant under sec. 211 I. P. C. The appellant was committed to the Court of Session and convicted. The finding of the Sessions Judge was that although K. S., did not assault the accused or knock out his tooth, he instigated his servants to do so, which they did and probably knocked out his tooth. It was held that on the facts found, K. S., was

Case not false in substance but bolstered up by false evidence.

Offence committed but not in the manner complained.

guilty of abetment of the assault, but being present he must be presumed to have committed the offence. Therefore, the charge of assaulting the appellant in person, brought by the appellant, was not false, and therefore, his conviction was set aside.

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## CHAPTER VI.

### Distinction between Sec. 182 and Sec. 211, I. P. C.

106. Having examined in the previous Chapters, the object and the scope, and the interpretation of the language of the two sections, we are now in a position to see the distinction between the two sections which is summarised as below —

**Distinction between sec. 182 and 211 I. P. C.**

Broadly speaking, the two sections deal with the two different results of a false information. Section 182 concerns the authority whose powers are intended to be abused, and sec. 211 deals with the parties injured thereby. Section 182 is thus included in Chapter X of the Indian Penal Code which deals with the contempts of lawful authority of public servants, and sec. 211 occurs in Chapter XI which deals with among others offences against public justice.

107. For easy reference, we proceed to show below in parallel columns the essential requisites of each of the sections :

**Essential requisites of sec. 182 and sec. 211.**

#### Sec. 182.

(1) That the accused gave the information ;

(2) that it was given to a public servant ;

(3) that it was false ;

(4) that the accused when giving it knew or believed it to be false ;

(5) that the accused intended or knew that the information will cause or knowing it likely that it will cause, such public servant (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts were known by him, or (b) to use the lawful power of such public servant to the injury or annoyance of any person.

#### Sec. 211.

(1) That the accused (a) instituted or caused to be instituted a criminal proceeding or (b) that he made a charge of an offence ;

(2) (a) that there were no just or lawful grounds for such proceeding ; (b) or that such charge was false ;

(3) that the accused at that time knew such criminal proceedings or charge to be without just or lawful grounds ;

(4) that he did, as stated above, with intent to cause injury to the person in question.

108. On a comparison of the two sections, it will appear that sec. 182 speaks of "giving information" (for the meaning of which see *ante* ¶ 29 and ¶ 33 : and as to "information" see ¶¶ 28 to 32) while sec. 211 speaks of "instituting a criminal proceeding or making a false charge" (for the meaning of which see *ante* ¶ 56, *et seq.*). A person, however, cannot institute a criminal proceeding or make a false charge except by information given : Hence section 182 necessarily implies the giving of information, not amounting to making a charge against any specified person. Section 182 is primarily intended for cases of false informations which do not ordinarily involve a particular allegation or charge against a specified and definite person. Section 211 covers cases where there is a definite information or charge with reference to a criminal offence against a particular person. *Bholur v. Punaji*, (1927) 105 I. C. 454 : s. c. 28 Cr. L. J. 934, (Nag). See *post* ¶ 138.

Thus every information which comes under sec. 211, comes also under sec. 182 ; and many but not all informations under sec. 182 fall under sec. 211. In *R. v. Raghu Tiwari*, (1893) I. L. R. 15 All. 336, 337, this was pointed out. The High Court observed that although it is difficult to see what case could arise under sec. 211 to which sec. 182 could not be applied, yet sec. 182 would apply to a case which might not fall under sec. 211 I. P. C.

So when a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under sec. 211, and not under sec. 182 I. P. C. See *R. v. Arjun*, (1882) I. L. R. 7 Bom. 184.

109. Where, however, the accused made the following report to the Police Officer : "I find there has been a theft : I suspect the persons named, and I want an inquiry to be made." Walsh, J., held that that report did not amount to a charge made under sec. 211, and that if it was false then it



was a false report under sec. 182. See *R. v. Matfura Prasad*, (1917) 1 L. R. 39 All. 715, ante ¶ 82, p. 60.

In *R. v. Gopal Bhikaji*, (1873) Unrep. Cr. Cases, Bom., 72,

False Statement  
of suspicion brings  
the case under  
sec. 182 I. P. C., and  
not under sec. 211.

It was held that a petition made by a person to the Police falsely stating that the petitioner suspects another person of having committed an offence and praying for an inquiry, does not amount to an institution of criminal proceedings against that person within the meaning of sec. 211; the petitioner should be charged under sec. 182. The High Court altered the conviction from sec. 211 to sec. 182 I. P. C.

110. If an information be such that it can come both under secs. 182 and 211, a question arises as to what is the proper section to apply in a particular case. In other words, does the application of the sec. 211 to a case bar the application of sec. 182 to that case. The question has been answered differently by different High Courts.

When informa-  
tion coming under  
both the sections.

111. In the Allahabad High Court in *R. v. Jugal Kisfior*, (1886) 1 L. R. 8 All. 383, it was held that when a specific false charge is made, the proper section for proceedings to be adopted is under sec. 211.

Allahabad  
High Court.

In *Barkatullah v. Sadho Kalwar*, (1912) 10 A. L. J. 429 : s. c. 13 Cr. L. J. 855, it was held that the offence of laying false information to the Police falls under the first paragraph of sec. 211 as well as under sec. 182 I. P. C. This case followed the authority of *R. v. Jagmohan*, (1909) 6 A. L. J. 989 : s. c. 11 Cr. L. J. 54, and *Hardwar Pal v. R.*, (1912) 1 L. R. 34 All. 522.

In *Jagmohan's* case, the Magistrate committed the accused to the Court of Session. The commitment was quashed on the ground that the Magistrate did not give as the ground of commitment that the fine or sentence which he could impose would not be adequate to meet the

Absence of find-  
ing that a Magis-  
trate is incompete-  
tent to pass ade-  
quate sentence—  
commitment  
quashed.

ends of justice ; and this case followed the cases of *R. v. Dharam Singh*, (1905) 3 A. L. J. 14 : s. c. 3 Cr. L. J. 94 ; and *R. v. Kayemulahi Mandal*, (1897) 1 L. R. 24 Cal. 429 : s. c. 1 C. W. N. 414.

112. In Bengal, in *Raflee Mahomed v. Abbas Khan*, (1867) 8 W. R. Cr. 67, the accused appeared before the Police and falsely charged the complainant with having caused the death of the accused's child by poisoning. The Magistrate dealt with the case under sec. 182. After pointing out the distinction between secs. 182. and 211, the High Court held that it was a case under sec. 211, triable by the Court of Session. It would seem from the above ruling that if there be an accusation of an offence as stated above, sec. 211 and not sec. 182 is applicable.

This ruling, however, was explained in *Bhokteram v. Heera Kolita*, (1879) 1 L. R. 5 Cal. 184. There Heera brought a charge of theft against Bhokteram at the Police thana which was reported by the Police to be false. Thereupon, Bhokteram instituted before the Assistant Commissioner, a charge against Heera under sec. 211 I. P. C., who placed him on his trial on a charge under sec. 182, and after a summary trial convicted him. One of the points for consideration of the High Court was whether the accused ought to have been tried under sec. 211, and not under sec. 182 I. P. C. The High Court observed, "*The offence under sec. 211 includes an offence under sec. 182, and there was no reason why, in a case of this nature, proceedings should not be taken under either section, although it may be, that in cases of a more serious nature the proper course would be to proceed under sec. 211.*" The case of *Raflee Mahomed v. Abbas Khan*, (1867) 8 W. R. Cr. 67, was such a case : it could not be dealt with by a Magistrate."

This case was followed in *R. v. Sarada Prasad Chatterjee*, (1904) 1 L. R. 32 Cal. 180, in which after reviewing the earlier cases their lordships held that "the law still remains as it was laid down in *Bhokteram v. Heera Kolita* ; and we entirely

accept that view. That read with *Russick Lal Mullick, In re*, (1880) 7 C. L. R. 382, lays down that a prosecution for a false charge may be under sec. 182 or sec. 211; but if the false charge was a serious one, the graver section 211 should be applied and the trial should be full and fair." See also *Gall Mandal v. R.*, (1905) 4 C. L. J. 88.

113. The case law on the subject up to 1921 may be thus summarized. See *Ma Saw Yin v. R.*, (1921) 64 I. C. 839: s. c. 23 Cr. L. J. 55 :—

**Summary**

"The Allahabad High Court has held in the case of *R. v. Raghu Tiwari*, (1893) I. L. R. 15 All. 336, that

**Views of different High Courts as to the sections to be applied.**

as soon as a false report is lodged, the offence under sec. 182 is complete and that criminal proceedings are not necessary to complete the offence. That the Magistrate has a discretion as to which section he will proceed under, but that proceedings under sec. 182 or 211 should not be commenced until the pending criminal proceedings instituted in consequence of the report have been disposed of."

**Allahabad High Court.**

"In the case of *Hardwar Pal v. R.*, (1912) I. L. R. 34 All. 522, in which Court proceedings had resulted from the report of the Police, the same Court held that the offence of making a false charge falls under both sections."

"The Calcutta High Court in the case of *R. v. Sarada Prosad Chatterjee*, (1904) I. L. R. 32 Cal. 180, 185, after

**Calcutta High Court.**

reviewing the authorities, held that 'the law still remains as it was laid down in *Bhokteram v. Heera Kolita*, (1879) I. L. R. 5 Cal. 184, and we entirely accept that view. That, read with *Russick Lal Mullick, In re*, (1880) 7 C. L. R. 382, lays down that a prosecution for a false charge may be under sec. 182 or sec. 211, but if the false charge was a serious one, the graver section 211 should be applied and the trial should be full and fair.' The same Court in *Girdhart Nalk v. R.*, (1901) 5 C. W. N. 727, held that where a false charge is made to the Police of a

cognizable offence, the offence committed by the person making the charge falls within the meaning of sec. 211 and not sec. 182.

"The Bombay High Court has taken a different view of these sections, and in the case of *Apaya Tatoba Munde v. R.*, (1913) 15 Bom. L. R. 574 : s. c. 14 Cr. L. J. 491 : 20 I. C. 747, has held that where the information to the Police amounts to the institution of criminal proceedings, sec. 211 and not sec. 182 is applicable." See the case of *R. v. Arjun*, ante ¶ 108, p. 81.

In the same case (*Ma Saw Yin v. R.*), it was pointed out by the Lower Burma Chief Court, that the weight of authority seems to indicate that where there have been Court proceedings in consequence of a report to the Police, then sec. 211 is the appropriate section to apply, and is so in any event, where the case is a serious one. \* \* \* But this does not of necessity make a prosecution under sec. 182 illegal, and *the*

*Madras High Court proceedings, 1st May 1872* (7 Mad. H. C. R. App. 5), has ruled \* \* \* that it is a question of expediency whether the High Court will quash the conviction for the minor offence (under sec. 182) and direct a trial for the graver one" (*i. e.*, under sec. 211, I. P. C.).

In *Jaggu v. Pala*, (1915), 2 U. B. R. (1915) 95 : s. c. 17 Cr. L. J. 177, in which there were two proceedings against the accused, one under sec. 211 at the instance of the party aggrieved and another under sec. 182 at the instance of the public servant concerned,—it was pointed out that the ordinary rule should be followed, and the charge under sec. 182 must be abandoned in favour of the more serious charge under sec. 211, I. P. C.

In *Rambrose v. R.*, (1928) I. L. R. 6 Rang. 578 : s. c. 30 Cr. L. J. 342, the Rangoon High Court held that "although the offence alleged against the petitioner falls under both

sec. 182 and sec. 211, I. P. C., prosecution under sec. 182 is quite improper. To permit such a prosecution, it will " \* \* \* " be contrary to the general principle that a prosecution for a lesser offence should not be launched when the facts "constitute a graver offence." The proceedings before the Magistrate was quashed for the above reasons. This case followed the cases of *R. v. Arjun*, (1882) 1 L. R. 7 Bom. 184, and *Jaggu v. Pala*, (1915) 33 L. C. 817 : s. c. 17 Cr. L. J. 177.

But in the case of *Ma Paw v. R.*, (1930) 1 L. R. 8 Rang. 499 : s. c. 32 Cr. L. J. 202, the High Court after reviewing the case-laws was of opinion that where information to the Police amounting to a false charge within the meaning of sec. 211, I. P. C., is followed by a complaint to the Court based on the same allegations, the two complaints may be regarded as so closely connected that independent prosecutions and convictions for two offences are undesirable ; and *in the ordinary way if a prosecution takes place it should be for the more serious of the two offences committed, and this may be a good ground for quashing proceedings under the minor section in their early stages.* But when there has been no prosecution for the more serious offence and a person has been prosecuted and convicted for the minor offence and the whole case is complete there is no reason for holding that the conviction is illegal.

In the case of *Ramchand v. R.*, (1928) 115 L. C. 313 : s. c. 30 Cr. L. J. 399, (Sind), the applicant, Ramchand, a <sup>2nd Judicial Commissioner's</sup> Signaller at Badin Railway Station lodged an information against one Mr. Assudomal who delivered a wrong ticket and declined to pay the fare and rushed through the gate. The Police, however, took no action. Then a complaint was filed by the applicant before the Magistrate charging Mr. Assudomal under secs. 332 and 504 I. P. C. The Magistrate ordered a preliminary inquiry. Mr. Assudomal also had the applicant challaned in the same Court on charges under secs. 323 and 342 I. P. C.,

and sec. 120 of the Railways Act. Meanwhile the Police filed a complaint against Ramchand, the applicant, under secs. 182 and 211, I. P. C., with regard to the complaint which the applicant had made to the Police against Mr. Assudomal. One of the points for decision was in this case whether the applicant should have been tried under sec. 182 or sec. 211 I. P. C. It was held in this case that "*where an accused commits an offence which comes both within the purview of secs. 182 and 211 I. P. C., the latter section includes an offence under the former section. Accused under such circumstances should be prosecuted under sec. 211 of the Indian Penal Code, on the complaint of the Court according to the provisions of sec. 195 (1) (b), and not under sec. 182 I. P. C., merely on the complaint by a public servant concerned.*" This case has followed the case of *Rambrose v. R.*, (1928) I. L. R. 6 Rang. 578 : s. c. 114 I. C. 685.

In *Daroga Gope v. R.*, (1925) I. L. R. 5 Pat. 33, 39, it was pointed out that "every false charge made to the Police is not necessarily an offence under sec. 211. If the *intention to injure is absent, then the offence falls under sec. 182*, and there is no reason why, if the prosecutor is unable or unwilling to prove intention, that is to say malice, he should not be permitted to take a conviction under sec. 182."

114. Again, when a criminal charge is made, or a criminal proceeding instituted, it must necessarily be against a defined person or set of persons ; for, a criminal charge or proceeding against an undefined person or persons is hardly imaginable. It follows, therefore, that in order to come under sec. 211, the false charge or proceeding must be against a defined person or set of persons. This is not necessary in a case under sec. 182. •

The above points of distinction between the two sections is illustrated in the case of *Apaya Tatoba Munde v. R.*, (1913) 15 Bom. L. R. 574 : s. c. 14 Cr. L. J. 491 : 20 I. C. 747.

Patna High Court.

Bombay High Court.

In the above case, Apaya brought before the Police a charge of theft against one Khanya, for having stolen a sheep and a goat. The Magistrate tried Khanya and discharged him. Khanya then asked for compensation. The Magistrate declined to accede to this petition, holding that there was nothing to satisfy him that the complaint of Apaya was made *mala fide* or was frivolous or vexatious.

Subsequently, proceedings were taken against Apaya Tatoba, and he was convicted under sec. 182 I. P. C. The case coming before the Bombay High Court in criminal

*Sec. 182 is to be interpreted not in isolation but in association with sec. 211 I. P. C.*

revision, Batchelor, J., said, "It is true, as the learned Government Pleader pointed out, that the mere words of section 182, if they stood alone, are wide enough to cover the case where the information conveyed to a Police Officer amounts to a direct charge of an offence, as "offence" is defined in the Penal Code; but section 182, it seems to me, is to be interpreted not in isolation but in association with sec. 211, and if the wording of the two sections is contrasted, the different circumstances provided for by both seem to me to be fairly easy of ascertainment. It appears to me that *where the information conveyed to the Police amounts to the institution of criminal proceedings against a defined person, or amounts to the falsely charging of a defined person, with an offence as "offence" is defined in the Penal Code, then the person giving such information has committed an offence punishable under sec. 211. In such a case, sec. 211 is, and sec. 182 is not the appropriate section* under which to frame the charge." \* \* \* Section 182, when read with

*Scope of two sections.*

sec. 211, must be understood as referring to cases where the information given to the public servant falls short of amounting to the institution of criminal proceedings against a defined person and falls short of amounting to the false charging of a defined person with an offence as defined in the Penal Code. The distinction is substantial because the Court's "sanction" (now according

to the recent amendment "complaint") is required for a prosecution under sec. 211. \* \* \* \* It was not, I think, competent

Sec. 211 is applicable when a defined person is charged with a definite offence.

to the Police to evade the necessity of magisterial sanction (now complaint) under sec. 211 by falling back upon sec. 182, because in my view a charge under sec. 182 was inappropriate to the facts upon which the prosecution was based." Heaton, J., in the same case said, "I do not wish to be understood as meaning that it is not in any case open to a Magistrate to frame a charge under sec. 182, even though the matter would also come under sec. 211. But I do not say this that where the matter does fairly come under sec. 211 and where a sanction (now a complaint) is needed, in order that the prosecution may proceed under that section, to proceed without any magisterial sanction (now complaint) under sec. 182 is to evade the statutory provisions of the law". See ¶¶ 110 to 113 for the views of the different High Courts.

115. Then again, to constitute an offence under sec. 182 L. P. C., it is only necessary that the *information* given by an accused to a public servant should *be false to his knowledge*, whereas to constitute an offence under sec. 211 of the Penal Code, it is necessary that the *accused should institute, or cause to be instituted some criminal proceedings against another person or should falsely charge him* with having committed an offence. *In re Mallala Obiah*, (1917) 42 L. C. 998 : s. c. 19 Cr. L. J. 38, (M).

116. Similarly, it was pointed out *In re Ganapathi Bhatta*, (1911) L. L. R. 36 Mad. 308, 310, that "the two offences may not be the same because under sec. 182 it is necessary that the person who gives information to a public servant must know or believe it to be false. Under sec. 211, on the other hand, the person who institutes a criminal proceeding against another need not know it to be false ; it is sufficient that he should know that there is no just or lawful ground for such proceeding or charge against that person."



117. In an *inquiry under sec. 211*, on the other hand, proof of the *absence of just and lawful ground* for making the charge is an important element. If every injured person has to prove the presence of malice in fact as an operative motive in the false informer, and he is further required to prove absence of reasonable cause, the results will be certainly detrimental to the interest of the public generally.

The criminal law makes a clear distinction between a false charge which falls under sec. 211 I. P. C., and false information given to the Police, in which latter case the offence falls under sec. 182 I. P. C. *It would not be necessary for a person prosecuting an offender under sec. 182, to prove malice and want of probable or reasonable cause*, except so far as they are implied in the act of giving information known to be false, *with the knowledge* or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. *Raghavendra v. Kashinaffi*, (1894) L. L. R. 19 Bom. 717, 725.

118. Every false charge made to the Police is not necessarily an offence under sec. 211, I. P. C. *If the intention to injure the person charged is absent then the offence falls under sec. 182.* *Daroga Gope v. R.*, (1925) L. L. R. 5 Pat. 33.

119. In *R. v. Ramkrishna*, (1906) 9 Bom. L. R., 33 : 5 Cr. L. J. 105 ; s. c. *sub nomine R. v. Ramchandra*, (1906) L. L. R. 31

In a case under sec. 182 there should be proof not only of absence of reasonable cause but of positive knowledge or belief of the falsity of the information.

Bom. 204, the accused on the 20th February 1905, sent a telegram to the Collector saying, "Head Master English School misappropriated Rs. 168 of fees since October. Please investigate yourself soon." For this action the accused was tried for an offence under sec. 182. It was found proved at the trial that on the 17th February, 1905, a peon of the English School had confessed before the Chairman of the School Committee that he had embezzled the money and promised to refund it in a few days. On the 20th February, 1905, the peon was prosecuted for this offence and was convicted and sentenced under sec. 182 I. P. C. The case

coming up before the High Court the distinction between the sections 182 and 211, was pointed out: "Section 182 relates only to cases of information given to Officials with the intention of causing or with knowledge that it is likely to cause, that Official to do or omit to do something, which he ought not to do or omit to do, or to use his lawful power to the injury or annoyance of any person. This is a distinct offence from that described in *sec. 211. I. P. C., which relates to an attempt to put the Criminal Courts in motion against another person.* The action which *sec. 211 I. P. C.,* renders penal, is action entailing very serious consequences, and therefore the more serious consideration is required of the individual who takes it. It is sufficient therefore in such cases for the prosecution to establish that there was no just or lawful grounds for the action taken and that the accused knew this. But something more is required in the case of action referred to in *sec. 182 I. P. C."*

"To bring a case within *sec. 182 I. P. C., it is necessary for the prosecution to prove, not merely absence of*  
*Onus. reasonable or probable cause for giving the*  
*information, but a positive knowledge or belief*  
*of the falsity of the information given.* In the present instance we think that the Magistrate has misconceived the spirit of *sec. 182, I. P. C.,* and has given to it more of the effect which should be given to *sec. 211, I. P. C.* The consequence has been that the *onus* has been placed on the accused and the Magistrate has not insisted upon proof by the prosecution of knowledge or belief on the part of the accused as to the falsity of the information given by him. \* The Magistrate states that the accused *probably* knew of the confession made by the peon, but there is nothing to *bring home to the accused the actual personal knowledge* of facts which the Magistrate can only say, *may* have been known to other persons at the time. On the other hand, the Magistrate states in his judgment that there were rumours connecting the Head Master as well as others with the embezzlement that had undoubtedly taken

place. In these circumstances *it still lay upon the prosecution to show not merely that the accused had insufficient foundation for the knowledge or belief he professed to have, but that he positively knew or believed the information he gave, to be false.* We would add that we do not wish it to be understood from the remarks made above that the accused was morally justified in the step he took. He may have acted with most reprehensible *rashness and recklessness* in giving

**Rashness and recklessness.** and such information to the Collector. It is not enough however to show that. For the circumstances which are necessary to bring a case within sec. 182 I. P. C., involve different consideration from those that arise from sec. 211 I. P. C. Section 182 I. P. C., does not necessarily impose upon the person giving information to the officer, criminal liability for mere want of caution before giving that information. *There must be positive and conscious falsehood established."* See also the case of *Thakar Singh v. Chhattar Pal*, (1910) 11 Cr. L. J. 420 : s. c. 20 P. R. 1910 Cr. ; 6 L. C. 944.

120. An offence under sec. 182 is punishable with imprisonment for six months, or with fine which may extend to one thousand rupees, or with both ; **Summary trial in false cases.** and therefore, it can be tried summarily. See sec. 260 of the Code of Criminal Procedure.

An offence under sec. 211 cannot be tried summarily as the punishment provided for, is more than six months. See the case of *Parst Hajra v. Bandhi Dhanuk*, (1900) 1 L. R. 28 Cal. 251. See also ¶ 362 *et seq.*

## **PART II**



## CHAPTER VII.

### ADJECTIVE LAW. — PROCEDURE.

Law regarding cognizance of cases under  
• sections 182 and 211, I. P. C.

By whom and to whom the complaint is to be made.

121. It is intended to deal in this part with the procedure for bringing the offender to justice when a false information has been given or a false charge has been made by him.

The adjective law can be conveniently divided into the consideration of the following broad topics, (1) the jurisdiction to initiate proceedings, (2) the mode of initiating it, (3) the inquiry to be made before a complaint is lodged, (4) to considerations before the complaint is made, (5) cognizance of cases under sec. 211, on police-reports, and the procedure of the Court taking the cognizance, (6) the trial of the offence including the onus, charge, etc., (7) appeals, revisions, etc. Let us consider these topics one by one.

#### (1) JURISDICTION TO INITIATE PROCEEDINGS :—

122. In Chapter XV of the Code of Criminal Procedure dealing with the conditions requisite for initiating criminal proceedings, the Legislature has enacted  
Procedure —  
General Law sec. 190 (as amended by Act XVIII of 1923) which runs as follows :—

(1) "Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence ;

(b) upon a report in writing of such facts made by any police-officer ;

(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(2) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under sub-section (1), clause (a) or clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance under sub-section (1), clause (c), of offences for which he may try or commit for trial."

As mentioned in the opening words of sec. 190 Cr. P. C., the general provision is subject to exceptions and some of the exceptions are contained in sec. 195 Cr. P. C.

123. Sec. 195 Cr. P. C., lays down (we quote only the portion relevant to sec. 182 and 211 I. P. C.) :—

Sec. 195 Cr. P. C.

(1) No Court shall take cognizance—(a) of any offence punishable under sec. 182 I. P. C., except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate; (b) of any offence punishable under sec. 211 I. P. C., when such offence is alleged to have been committed *in or in relation to, any proceeding* in any Court, *except on the complaint in writing* of such Court or of some other Court to which such Court is subordinate. \* \* \* (2) In clauses (b) and (c) of sub-section (1) the term "Court" *includes* a Civil, Revenue or

The meaning of the word, "Court."

Criminal Court, but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877." (Now the Indian Registration Act, 1908; Act XIV of 1908).

(3) For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies,

Meaning of "Subordinate Court"

to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate :

Provided that (a) where appeals lie to more than one Court the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ; and

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court, according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

(4) The provisions of sub-section (1), with reference to the offences named therein, apply also to criminal conspiracies to commit such offences and to the abetment of such offences and attempts to commit them.

(5) Where a complaint has been made under sub-section (1) clause (a), by a Public servant, any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court, and upon receipt thereof by the Court, no further proceedings shall be taken on the complaint.

124. Section 195 Cr. P. C., is thus a limiting section providing an exception to the general law that any one can make a complaint of a criminal offence. See the case of *R. v. Bal Mukand*, (1928) 110 I. C. 108 : s. c. 29 Cr. L. J. 652, (Lah).

Prior to the Amending Act of 1923, a private party was entitled to complain of the offences mentioned in cls. (a) and (b) of sub-section (1) of sec. 195 Cr. P. C., but only after obtaining a sanction for the prosecution.

A sanction presupposed an application by the party and the sanction was a condition precedent to the initiation of the proceeding, but the want of such a sanction was overlooked after the trial unless its absence had in fact occasioned a failure of justice.

Where no application for sanction was made by a party



the Court had still the power under the old Code to make a complaint. It was also empowered to send a case for inquiry or trial to the nearest Magistrate of the first class under the provision of the then section 476 Cr. P. C., provided the offence was committed before it, or brought under its notice in the course of a judicial proceeding.

Now the old procedure of sanctioning or directing a prosecution is no longer allowed ; the chief reason for abolishing

The object of the amendment

the sanction is that often the sanction was sought with the *sole object* of obtaining an unfair advantage over the other side, it is now left to the officer concerned or a Court to initiate a prosecution, only when the interest of public justice renders it necessary. See the observations of the High Court in *Ram Prasad Roy v. Sooba Roy*, (1897) 1 C. W. N. 400, 401.

The Select Committee in their report on the Amending Act of 1923, explained the object of the alteration thus :—

Report of the Select Committee.

"The provisions of sec. 195 cause constant and great difficulty, and various amendments have been suggested which we have considered at length. We have no doubt that it will not be possible to remedy the evils which are connected with this section so long as private individuals are allowed to prosecute for offences connected with the administration of justice. In our opinion the only effective way of dealing with the section is to allow prosecution to be launched only by the public servant or by the Court."

"We see no reason why the public servant or the Court should not file a complaint exactly in the same way as a private individual would do in other cases, and our proposals in this connection with this section and the enlargement of sec. 476 involve the adoption of this principle. In our view sec. 195 should bar the cognizance by any Court, of offences of this nature except upon such complaint, while the procedure to be followed when the Court desires to prosecute should be prescribed by sec. 476."

"The adoption of this principle will, at all events, get rid of the objectionable practice of keeping a sanction, which has been granted to a private individual, hanging over the head of the accused person for a period of six months, which is frequently utilised for the various purposes of blackmail. In the case of a complaint by a Court or public servant we do not think that it will be necessary to prescribe any limit of time.

"It will also, in our opinion, be a distinct advantage to get rid altogether of the term 'sanction' in connection with these prosecutions, a result which will be effected by the amendments we propose."

"We recognise that cl. (a) of sub-section (1) stands on a somewhat different footing from clauses (b) and (c), but we think there is no reason to retain even in it any reference to a sanction, as prosecutions under cl. (a) can reasonably be launched in all cases on a direct complaint of a public servant."

125. The effect of the present section has been considered in *Fakir Mahomed v. R.*, (1926), 27 Cr. L. J. 1105, 1110 :

Effect of the new sec. 195 Cr. P. C., considered. s. c. 97 L. C. 417, (Sind), and it has been held there that sec. 195 Cr. P. C., (which deals in cl. (a) with sec. 182 and in cl. (b) with sec. 211), though it forms a part of the Code of Procedure *in reality contains a provision of the substantive law of crimes*. It does not deal with the competency of the Courts, nor lay down which of several Courts shall, in any particular matter, have jurisdiction to try the case. It in reality lays down that offence therein referred to (or rather the acts constituting those offences) shall not be deemed to be any offences at all except on the complaint of the persons or the Courts therein specified; it enhances the connotation of those offences and limits the scope of their definition.

126. We will now consider in detail the effect of the section 195 as now enacted upon the taking of cognizance of (A), offences under sec. 182 I. P. C., and (B), offences under sec. 211.

(A).—Cognizance of an offence under sec. 182 I. P. C.

127. As stated before, sec. 195, sub-sec. (1) cl. (a), Cr. P. C., lays down\* that, "no Court shall take cognizance of an offence under sec. 182, except on the complaint, in writing of the public servant concerned or some other public servant to whom he is subordinate."

Cognizance of proceedings for offences under sec. 182 I. P. C.

A private person has thus no *locus standi* to complain. A prosecution by the public servant concerned or his superior is the only remedy in such cases. If neither of them complains, a private person has no remedy, except by a civil suit or by a prosecution for defamation if such an offence was committed. As to the remedy by a prosecution for defamation, see *post* ¶ 443 *et seq.*

Private person's remedy when there is no complaint.

In *R. v. Hurtee Ram*, (1871) 3 N. W. P., H. C. R. 194 (see *ante* ¶ 21, p. 14), the prisoner lodged a false information to the Police. No action was taken by the Police upon the information. The persons informed against, then complained against the prisoner who was convicted. The High Court held that the former had no *locus standi*. There was no ground for complaint under sec. 182 on the part of any one but the public servant against whom the offence was committed. See also *Moulvy Abdool Luteef*, (1868) 9 W. R. Cr. 31, *ante* ¶ 38, p. 26.

A Court may, however, be moved by a private party by an application to complain against a person who has committed such an offence. The law does not say who in such cases can move the Court to complain. When a private party moves the Court who should proceed with caution and discernment; the principal considerations being whether there is a *prima facie* case against the person for whose prosecution the Court is moved, and whether the real object of the applicant is not to satisfy his private ends or personal spite. *Kusum Sao v. Janak Lal*, (1919) 52 I. C. 219; s. c. 20 Cr. L. J. 603; 4 P. L. J. 374.

The public servant before whom a false information is given very often happens to be a Police Officer. The public servant concerned does not mean necessarily the public servant before whom the information is given. The words include also the public servant who investigated the case.

128. In *Lachmi Singh v. R.*, (1924) 25 Cr. L. J. 972, it was the Sub-Inspector before whom the information was given and the writer Head Constable who had made only the inquiry into the matter, filed the complaint before the Criminal Court. In the Court below an objection was taken that the proper person to make the complaint was the Sub-Inspector before whom the information was given by the accused and who had recorded the same, and not the writer Head Constable who had only made an inquiry into the matter. Kulwant Sahay, J., observed, "This objection has not been pressed before me and I find there is no substance in it." Therefore, according to this ruling the words "public servant concerned" is wide enough to include an investigating officer before whom the information is not lodged.

A different view has been taken in *Barhamdeo Singh v. R.*, (1927) 28 Cr. L. J. 902 : s. c. 105 I. C. 230, (Pat). In this case the accused made a statement to the writer Head Constable at Mokameh Railway Police Station charging a person with theft at Barh town. The writer Head Constable forwarded the alleged offender to the Sub-Inspector of Bath. The latter, on investigation, found the charge to be false and made a complaint to the Magistrate for prosecuting the accused under secs. 182 and 211, I. P. C. . It was held that the Magistrate had no jurisdiction to take cognizance of the case under sec. 182 of the Penal Code on the complaint of the Sub-Inspector of Barh inasmuch as the latter was neither the public servant to whom the false information was given, nor an officer to whom the writer Head Constable at Mokameh to whom the information was given was subordinate.

In this case the Magistrate to whom the complaint was made had only second class power. Hence he had no jurisdiction to try the case under sec. 211.

The above case seems to be in accordance with law ; for, the offence under sec. 182 I. P. C., is complete as soon as the first information is given and public officer concerned is the public officer to whom the information is lodged with the object of moving him to do or omit to do some official duty and a second offence is not committed before the investigating officer.

It may be stated here that even if a Magistrate is disentitled by a statutory bar to take cognizance by him of any offence under sec. 182, cognizance by him of an offence under sec. 211, should also be barred without any statutory provision to that effect. See *Kantir Missir v. R.*, (1929) 30 Cr. L. J. 710. (Pat). In this case it was further held that a Magistrate may take cognizance of a case under sec. 211 on the complaint of the investigating Police Officer though he is not also an officer referred to under sec. 190 (1) (a) ; but if the charge under sec. 211 I. P. C., fails, there cannot by reason of sec. 190 (1) (a), Cr. P. C., be a conviction under sec. 182 I. P. C.

As to the propriety of taking cognizance on a police report see *post* ¶¶ 135 and 225.

In the case of *Jokhi Mian v. Mahimud Dafadar*, (1927) 115 I. C. 882 : s. c. 30 Cr. L. J. 545 (Pat), the petitioner filed a complaint before the Magistrate who after examining the petitioner sent the complaint to the Sub-Inspector for inquiry and report. The Sub-Inspector reported the case to be maliciously false, recommended the prosecution of the petitioner under sec. 211 I. P. C., and preferred a complaint of that offence against the petitioner. The petitioner filed a petition impugning the report and pray the Magistrate to make a judicial inquiry. In an order of the 3rd August in which he recited these facts the Magistrate

directed the Sub-Inspector to submit a report for prosecution under sec. 182 and on the 24th August on receipt of the "report for prosecution" issued summons on the petitioner under sec. 182. The High Court held that the Magistrate had no jurisdiction to prosecute the petitioner either under sec. 182 or sec. 211, Penal Code, on the complaint of the Police Officer as sec. 195 (1) was a bar to his taking cognizance of the case except on the complaint of the Magistrate himself. Macpherson, J., said, "The learned Sessions Judge rightly points out that the alleged false information was given to the Sub-Divisional Magistrate. Though the complaint had been sent to the Sub-Inspector for inquiry and report, the petitioner had actually given him no information. Accordingly sec. 195 (1) (a) of the Code of Criminal Procedure bars a complaint by the Sub-Inspector of an offence under sec. 182 since *he was not "the public servant concerned" or the superior of such public servant* to whom the false information punishable under sec. 182 was given. If the offence is one under sec. 182, no complaint of it could be laid by any person except the Sub-Divisional Magistrate himself. But the complaint \* \* \* properly fell under the provisions of sec. 211; and it was committed in relation to the Court of the Sub-Divisional Magistrate, sec. 195 (1) (b) is a bar to cognizance being taken of it except on the complaint of that Court."

(1) Regarding the prosecution of an offence under sec. 182 committed before a Court :—

129. When the offence under sec. 182 I. P. C., is committed in Court, the *presiding officer* or his successor is the proper person to complain. Such an officer does so in his capacity of a public servant and not of a court.

The capacity in which one acts is important to note in considering as to who is to be regarded as the superior officer of the person who has got the right to interfere in such complaints. The point becomes also important if there

is a change of the officer ; and it becomes necessary to move the successor for making the complaint.

In *Maini Misser v. R.*, (1926) L. L. R. 6 Pat. 39 : s. c. 28 Cr. L. J. 353, 355 (Pat), it was pointed out that by the two clauses (a) and (b) of sub-section (1) of ~~sec.~~ 195 Cr. P. C., two distinct classes of offences are referred to and that there are two distinct classes of persons by whom the complaint must be made in such cases before the Court trying the offence can take cognizance of them. The first class of persons are the public servants themselves whose orders have been disobeyed or brought into contempt. The second class is the Court in which, or in relation to any proceeding in which, the offence has been committed.

In regard to an offence under sec. 182 L. P. C., the only person who can complain of the offence must be the public servant concerned or his superior, whether he has power to act as a Court being immaterial.

130. In *Elahi Bux v. R.*, (1909) 11 C. L. J. 212, the petitioner complained to the District Registrar against the Sub-Registrar alleging that the Sub-Registrar had misappropriated Rs. 13, paid to him by the petitioner on account of fees for a commission. The District Registrar held an inquiry, as the result of which he came to the conclusion that the complaint was false. He then forwarded the report to himself as a District Magistrate. Then Elahi Bux was ordered to be prosecuted under secs. 182 and 211 of the Indian Penal Code. The order in this case was held to be wrong, for the information being given to the District Registrar, the District Magistrate was not the public servant in this case nor was the public servant to whom he was subordinate ; and as to the offence under sec. 211, L. P. C., it was held that there was no offence committed in or in relation to any proceedings in Court.

131. A different view seems to have been taken in the following cases where sub-section (3) of sec. 195, has been

held to be applicable not only to clauses (b) and (c) of sub-section (1) of sec. 195 (in which the word "Court" occurs) but also to cl. (a) of sub-sec. (1) in cases when the public servant concerned is a Court and the offence is committed in connection with proceedings in which the public servant is so acting. *Arunachalam v. Ponnuswami*, (1918) I. L. R. 42 Mad. 64, 68. See also *In re Badiuddin Sarehuddin*, (1922) I. L. R. 47 Bom. 102 ; s. c. 23 Cr. L. J. 576. See *post* ¶ 134.

It is submitted with due respect that the above cases unwarrantably extends the application of sub-sec. (3) to sub-sec. (1) in which the word "Court" does not occur.

The Madras High Court subsequently in the case of *Nataraja Pillai v. Rangaswami*, (1923) I. L. R. 47 Mad. 56, doubted the principle laid down in the case of *Arunachalam*. See also the case of *Maini Misser v. R.*, *ante* ¶ 129.

## (2) Power of Superior Officers to Complain for the above Offences : Subordination.

132. As stated before, the complaint can be lodged by any public servant to whom such public servant is subordinate. "The subordination of one public servant to another may arise either from express enactment or from the fact that both the public servants belong to the same department, one being superior in rank to the other." *Venkatasami v. Narasimhaaya*, (1908) 4 M. L. T. 214 ; S. C. 8 Cr. L. J. 400.

The Registrar of the Court of Small Causes is subordinate to the Chief Judge of the Court. *In the matter of Goverdhandas*, (1902) I. L. R. 27 Bom. 130.

A Constable is subordinate to the Superintendent of Police, (*R. v. Grish Chunder Sirkar*, (1875) 19 W. R. Cr. 33).

The Secretary of a Municipal Board is subordinate to the Chairman. (*In re Sheo Prasad*, 1892 A. W. N. 31).

A Station House Officer is not subordinate to the Taluk Magistrate. (*R. v. Veludam Pillai*, (1882) I. L. R. 6 Mad. 146).

In *Mritgunjay Prasad v. Ramrao*, (1926) 96 L. C. 866 :



s. c. 27 Cr. L. J. 1010 (Nag), it was held that a process-server in Central Provinces is subordinate to a Nazir, District Judge or Judicial Commissioner and not to a Sub-Judge and a complaint of an offence stated in sec. 195 (1) (a) in which the former is concerned can be filed under sec. 195 (1) (a) of the Criminal Procedure Code only by him or any one of the persons to whom he is subordinate and not by the Subordinate Judge or by any other Judge, even an Additional Judicial Commissioner who is no more an executive superior of the process-server than the Subordinate Judge.\*

The Police is not subordinate to the Honorary Magistrate, (*R. v. Baldeo*; 1895 A. W. N. 152), or to the Township Magistrate; (*R. v. Mixan*, 1. L. B. R. 101). Neither the Police nor the Sub-Magistrate is subordinate to the Sessions Judge, *Reddi Rami Reddi v. Public Prosecutor*, (1914) 15 Cr. L. J. 612 : s. c. 25 I. C. 524; 27 M. L. J. 586.

A Village Munsiff or Village Magistrate is not subordinate to a Sub-Magistrate. *Venkatasami v. Narasimhaayya*, (1908) 18 M. L. J. 584; s. c. 8 Cr. L. J. 400 : dissenting from *R. v. Periaman*, (1881) 1 L. R. 4 Mad. 241. See also the case of *Pallikudathan v. Budda Goundan*, (1923) 1 L. R. 47 Mad. 229, which followed the case of *Venkatasami* and dissented from *Periannan's* case.

A Police Officer is not subordinate to the Sub-Divisional Officer who is after all a Magistrate of the first class.

133. There is a conflict of opinion as to whether Police Officers are subordinate to the District Magistrate.

In *Ramaswamy Lall v. R.*, (1900) 1 L. R. 27 Cal. 452, it was held that though the Police Officers in a District are generally subordinate to the District Magistrate, the subordination contemplated by sec. 195 Cr.

Are Police Officers subordinate to the District Magistrate?

P. C. was not such subordination. That subordination contemplated some superior officer of Police.

\* According to the Calcutta High Court a process-server is subordinate to the Nazir. See High Court's General Rule<sup>5</sup> and Circular orders (Civil), p. 12.

This decision was dissented from in *R. v. Shib Singh*, (1904) I. L. R. 27 All. 292, in which it was pointed out that the Calcutta High Court overlooked the provisions of sec. 4, para (2) of Act V of 1861. The said para runs as follows :—

“The administration of the Police throughout the local jurisdiction of the Magistrate of the district shall, under the *general control and direction of such Magistrate*, be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.”

The Punjab Chief Court in *Shibbi v. R.*, (1909) 5 I. C. 829 : s. c. 6 P. R. 1910 Cr. : 11 Cr. L. J. 252, took the same view as the Allahabad High Court and pointed out that the case of *Ramasory Lall* was practically differed from in *R. v. Sarada Prosad Chatterjee*, (1904) I. L. R. 32 Cal. 180. But the case of *Khazan Singh v. Kirpa Singh*, (1923) I. L. R. 4 Lah. 150, has followed the case of *Ramasory Lall*.

The Patna High Court in the case of *Kantir Missir v. R.*, (1929) 30 Cr. L. J. 710, held that the expression “authority to which such public servant is subordinate” in sec. 195 (5), Cr. P. C., is very wide and connotes apparently a more distant and general entity than a departmental superior and cover the District Magistrate in relation to the Police of his district.

134. A Sub-Divisional Officer as a public servant is subordinate to the District Magistrate with reference to sec. 195 (1) (a), and sub-sec. (3) of 195 Cr. P. C., but is subordinate to the Sessions Judge with reference to clauses (b) and (c) of the said section. But see the case of *In re Badiuddin Sarfuddin*, (1922) I. L. R. 47 Bom. 102 : s. c. 23 Cr. L. J. 576 : 68 I. C. 416.

135. The public officer concerned is one to whom the false information is given and not one who makes an inquiry regarding it; (compare the procedure under sec. 211 in such cases).

The position of a Sub-Divisional Officer.

Meaning of the words “public officer concerned”

In *Asmatulla v. R.*, (1899) 4 C. W. N. 366, a Deputy Commissioner upon receiving a petition against a *tehsildar* and others of the locality, referred 'the matter to the Sub-Divisional Magistrate for inquiry and report. The Sub-Divisional Magistrate in consequence of an opinion formed by him during the inquiry, proceeded to try the petitioner who was one of the persons who made the petition originally to the Deputy Commissioner, and convicted him under sec. 182 L. P. C. The conviction and sentence were set aside by the High Court; and it was held that the Sub-Divisional Magistrate clearly had no jurisdiction to institute these proceedings, inasmuch as the complaint which led to the trial was not made to him but was made to the Deputy Commissioner, without whose previous sanction or a complaint (now under the amended section only on "complaint)," no trial under sec. 182 could be held. But see *Lachmi Singh's case*, (1924) 25 Cr. L. J. 972, ¶ 128, 225.

#### B.—Cognizance of offences under sec. 211 L. P. C.

136. Offences under sec. 211 L. P. C., may be classified under two heads, viz., :—

(1) those that are not committed in or in relation to a proceeding in Court,

(2) those that are committed in or in relation to any proceeding in any Court.

137. (1) Offences not committed in or in relation to a proceeding in Court.

Section 195 being an exception to sec. 190, it follows, where the exception does not cover a case, the general law laid down under sec. 190 Cr. P. C., applies. Thus offences under sec. 211 L. P. C., which are not committed in or in relation to any proceeding in Court (so as to come under sec. 195 Cr. P. C.) can be taken cognizance of either on a complaint or on a police report or on the Magistrate's own knowledge or suspicion.

138. Accordingly when a false charge is made only to the Police and when the person making the false charge has not complained to the Magistrate and when no Court proceedings have ensued there is no occasion for any Court to complain.

Private person  
may complain in  
a case under sec.  
211 I. P. C.

The Court taking cognizance of the offence under sec. 211 I. P. C., in such cases derives its jurisdiction from the report of the Police ; and the Court may also derive jurisdiction by a petition of complaint filed before it by the person against whom a false accusation was lodged before the Police Officer. In such cases sub-sec. (1) cl. (b) of sec. 195 Cr. P. C., does not apply and is no bar.

In the case of *Bholu v. Punaji*, (1927) 28 Cr. L. J. 934 : s. c. 105 I. C. 454 (Nag), Punaji filed a complaint in the Court of the Sub-Divisional Magistrate against the applicant Bholu, under sec. 211 I. P. C. The complaint against Bholu was that he had specifically reported to the Police that Punaji and other had committed arson in respect of burning of the house of one Dewaji, and that the Police, on inquiry had found that the information was false and malicious one. The Sub-Divisional Magistrate held that, the complaint in writing of the Police Officer who look report was necessary under sec. 195, (1) (a) Cr. P. C., and as this was not forthcoming he would not entertain the complaint. The complainant, Punaji, applied in revision to the Session Judge for reversing the order of the Sub-Divisional Magistrate. The Sessions Judge in reversing the order held that no complaint by the Police Officer was necessary in the circumstances of the case directed the Sub-Divisional Magistrate to make further inquiry into the complaint. The applicant Bholu made an application for revision before the Nagpur Judicial Commissioner's Court against the said order of the Sessions Judge. In confirming the order of the Sessions Judge, the Nagpur Judicial Commissioner's Court observed, "It might well be that, in a case like the present, the definite intention of the Legislature, when a person like the non-applicant (Punaji), in this case has had

false information given against him to the Police, and the Police, have taken no action beyond the necessary inquiry made to satisfy themselves that the information was false, was deliberately to leave the door open to the person aggrieved to have his remedy by direct complaint under sec. 211 I. P. C."

The Lahore High Court in the case of *Muhammada v. R.*, (1928) I. L. R. 9 Lah 408, dissented from the decisions of *Gurditta* (19 P. R. Cr., 1917), *Hardwar Pal*, (I. L. R. 34 All. 522), and followed *Kashiram*, (I. L. R. 46 All. 906). In the case of *Muhammada*, mentioned above, the accused made a report to the police station which implicated (*inter alia*) the petitioner Rausahan Beg against whom, however, no proceedings were taken by the Police nor was he put upon his trial before any Magistrate, it was held that sub-sec. (1) cl. (b) of sec. 195 Cr. P. C., did not apply to the prosecution of the accused by Rausahan Beg under sec. 211 I. P. C.; the offence alleged thereunder not having been committed "in or in relation to any proceedings in any Court" within the meaning of the clause.

139. • When an offence under sec. 211 I. P. C., is not committed in or in relation to any proceeding in any Court, a Magistrate may also take cognizance of the offence upon information received from any person other than a Police Officer, or upon his own knowledge or suspicion, that the offence has been committed. See sec. 190, sub-sec. (1), cl., (c).

140. In the case of *R. v. Sham Lall*, (1887) I. L. R. 14 Cal. 707 (F. B.), Sham Lall on the 15th March 1887, gave information to the Police that Muni Lal and others had looted his crops. The Police investigated the matter, and, reported that the land had been sown and cultivated by Muni Lal and the case involved a question of title, and they, therefore, returned the case in C Form as "false owing to a question of title being involved." This report dated the 22nd March was forwarded to the District Magistrate who on the 24th March perusing the report declared the charge false, and

ordered a prosecution against Sham Lall for having brought a false complaint. On the 24th or 25th March, Sham Lall appeared before the District Magistrate, and asked to have his witnesses summoned and the case tried. This application was rejected on the 31st March ; on the 1st April Sham Lall made another application to the same purport, but this application was, on the 5th April, also refused. The case being referred by the Sessions Judge to the High Court, one of the questions before the Full Bench was, "Had the Magistrate, upon the report of the Police, dated the 22nd March, 1887, jurisdiction to make the order of 24th March, 1887 ?" It was held by the Full Bench that the Magistrate had jurisdiction to take cognizance of the case upon the police report ; Petheram, C. J., said. "*The facts alleged, if they are true, might constitute an offence under sec. 211, and a Magistrate may take cognizance of such an offence if it is properly brought before him ; and it seems to me that, where a state of facts is brought to his notice by a police report, which affords ground for supposing that the offence has been committed, he has jurisdiction under sections 101 and 192 (now sec. 190 and 192 Cr. P. C.), to inquire into or try the charge himself, or to send it for inquiry or trial to one of his subordinates.*"

The same view was taken in *Gangadhar Pradhan v. R.*, (1915) I. L. R. 43 Cal. 173, 177. and in *R. v. Hardwar Pal.* (1912) I. L. R. 34 All. 522.

141. It has been held that when a Police Officer after investigation reports the case to be false, a Magistrate is competent to take cognizance of the case, for the Magistrate derives his jurisdiction to try the charge under sec. 211 from the police report. *Tyabulla v. R.*, (1916) I. L. R. 43 Cal. 1152 ; s. c. 20 C. W. N. 1265 ; 24 C. L. J. 134.

142. The "police report" or "report of the Police" is not defined in the Code of Criminal Procedure. The technical meaning of the words "police report" is the report of the Police Officer

Meaning of  
"police report."

in cognizable cases under sec. 173 Cr. P. C. In *R. v. Sada*, (1901) 1 L. R. 26 Bom. 150 (F. B.) ; in *Chidambaram Pillai v. R.*, (1908) 1 L. R. 32 Mad. 3 ; and in *Bhairab Chandra Barua v. R.*, (1919) 1 L. R. 46 Cal. 807, it was held that police report of a non-cognizable case is a "complaint" under sec. 4 (d). After the Amending Act of 1923 the matter is not of importance.

143. An allegation made to a Magistrate about an offence with a view to his taking action under the Code is all that is required to bring such an allegation within the terms of the word "complaints" as defined in the Code and the so-called report of the Police Officer, fulfils the requirements of the word "complaint," and it is immaterial whether the prayer to prosecute the accused is made in a separate form or is made in the course of the report on the original case. See ante ¶ 71, p. 51 and ¶ 76, p. 57 (foot note).

144. Before the Amending Act of 1923 the wording of sec. 190 (b) was "upon a police report of such facts." The words have been substituted in the Amended Code as "upon a report in writing of such facts made by any Police Officer." The amended section, therefore, includes report of Police Officers in cognizable cases as well as reports in non-cognizable cases under sec. 155 Cr. P. C., and a new clause (aa) has been added to sec. 200 Cr. P. C., doing away with the necessity of examining the Police Officer making such a report.

In the case of *Prag Datta Tiwari v. R.*, (1928) 111 L. C. 858 : s. c. 29 Cr. L. J. 938, the question arose as to whether the Magistrate had the power to take cognizance of an offence under sec. 211, on a report by a Police Officer. In this case, "the Superintendent of Police who complained did not take action under sec. 195, (1). The High Court held that the Police Officer can make a report in writing of facts relating to a non-cognizable offence also, and on such report the Magistrate can take cognizance of the offence. Under sec. 190 (b) cognizance may be taken of an offence upon a report

in writing of such facts made by any Police Officer. In the case of *Public Prosecutor v. Ratnavelu Chetty*, (1926) I. L. R. 49 Mad. 525, it was held by a Full Bench that by virtue of sections 190 (1) (b) and 200 (aa) Cr. P. C., Magistrates mentioned in sec. 190 are entitled to take cognizance of even non-cognizable offences upon a report made in writing by a Police Officer without examining the officer upon oath."

The wording of sec. 190 (1) (b), however, was amended in 1923. The words "upon a police report of such facts," have been omitted and in their places "upon a report in writing of such facts made by any Police Officer" have been substituted by Act XVIII of 1923, and a new clause has been added to sec. 200 Cr. P. C., doing away with the necessity of examining the complainant when the complaint is made by a Court or a public servant in writing. The object in altering the words "police report" seems to avoid the same meaning being attached to these words as has been given to them in other parts of the Code, as for instance in sec. 170 Cr. P. C.

The Select Committee of 1916, in altering words of clause (b) of sec. 190 Cr. P. C., remarked that the words "police report" in sec. 190 was not intended to be a technical expression but was used to cover any report made by a Police Officer. It may be noted that the Legislature while altering the words of sec. 190 (b) did not make any alteration in the definition of the word "complaint" as given in sec. 4 (h) of the Criminal Procedure Code. The result is that although the word "complaint" as defined in sec. 4 (h) will not include the report of a Police Officer in a cognizable case, it will include that made in a non-cognizable one. See *R. v. Shivaswami*, (1927) 29 Bom. L. R. 742 : A. L. R. (1927) Bom. 440, 442 : 28 Cr. L. J. 939 ; and *Radhika v. Hamid Ali*, (1926) I. L. R. 54 Cal. 371 ; s. c. 28 Cr. L. J. 316.

145. The question before the Full Bench in *The Public Prosecutor v. Ratnavelu Chetty*, (1926) I. L. R. 49 Mad. 525, was whether the commitment on a charge of a non-cognizable offence upon a police report was illegal. The Full Bench



was of opinion that a narrow construction on the word "report" in sec. 190 (1) (b), should not be placed as including reports of cognizable offences. The Full Bench said, "While the section itself speaks of 'any offence,' we think that an attempt to limit its application to one 'particular class of offences' is not warranted by the language used," (p. 535). See also *Bholanath Das v. R.*, (1923) 83 L. C. 628 : s. c. 26 Cr. L. J. 68 : 28 C. W. N. 490, 492.

It will thus be seen that the report of a Police Officer about the offence under sec. 211 is good enough for the Magistrate to take cognizance of the offence.

(2). Cognizance of cases under sec. 211 committed in, or in relation to, a proceeding in Court.

146. Section 195, sub-sec. (1) cl. (b) provides that in the cases coming under the above class the only authority to make a complaint is the Court in, or in relation to, proceedings before which the offence is alleged to have been committed or some other Court to which such Court is subordinate.

147. The object of the law has been stated *In re Parameswaran Nambudri*, (1915) 1 L. R. 39 Mad. 677, 679, where Ayling, J., pointed out that "the object of cl. (b) of sec. 195 Cr. P. C., is to save the time of Criminal Courts; being wasted and accused persons being needlessly harassed by erecting a safeguard against rash, baseless or vexatious prosecutions for the offences specified. It aims at doing so by providing that where, prior to the institution of the criminal prosecution, a properly constituted judicial tribunal has placed itself in a position to determine whether the facts constituting the offence really exist, the Criminal Court should decline cognizance unless that tribunal has, in effect, certified that in its opinion the complaint is one worthy of investigation."

148. Now, an offence under sec. 211 may be committed in Court if the false charge is laid there or it may be committed before the Police in the first instance with simultaneous or subsequent proceedings in Court.

If the false charge is made in Court the offence is committed in Court and so it comes within the perview of sec. 195 sub-sec. (1) cl. (b). If it is made simultaneously with a proceeding in Court, the offence obviously is committed in relation to an existing proceeding in Court and it requires a "complaint" by the Court concerned.

149. Thus where an information is lodged with the Police and the Police on inquiry reports it to be false, but the informant, by an application to a Magistrate, insists on a judicial investigation, he is deemed to have made a "complaint" in Court and in such cases a complaint by the Court itself under sec. 195 (1)(b) Cr. P. C., is necessary before cognizance of a case under sec. 211 L. P. C., is taken irrespective of the false charge made to the Police. See the case of *Shaiikh Muhammad Yassin v. R.*, (1924) I. L. R. 4 Pat. 323, *post* ¶ 155.

Where a person lodged an information against another before the Police and subsequently filed a complaint against the same person for the same offence before a Magistrate and the latter discharged the accused, finding the complaint to be false, it was held by the Rangoon High Court in the case of *Maung Pe v. Maung Chaw*, (1928) 112 I. C. 468 s. c. 29 Cr. L. J. 1044, that the complainant could not be prosecuted for an offence under sec. 182, Penal Code, on a complaint by the Police, but could be prosecuted only for an offence under sec. 211 of the Code upon a complaint by the Magistrate before whom he laid the charge.

150. In *Ghaslawan Singh v. R.*, (1926) 96 I. C. 870 : s. c.

27 Cr. L. J. 1014, a servant of the accused, Ghaslawan, raised an alarm on the 9th October 1925, that a dacoity was being committed. The *chaukidar* of the village being informed that there was a dacoity in the Thakurs' quaters, went there not to the accused's house but to the houses of certain other Thakurs.

Where an information is lodged with police who reports it to be false but the informant by an application insists on judicial investigation.

Where a complaint is made in Court but subsequently a statement is made to a Police—a complaint by the Court and not by the Police necessary in a prosecution under sec. 211 I. P. C.

These Thakurs caused a report to be made at the thana that the accused had made a false alarm of the dacoity. On the other hand, the accused without going to the thana or making any report to the Police, on the 10th October, filed a petition in Court against certain persons, charging them with dacoity. That night, at about 11 P. M., on his return after making this complaint, he made a statement to the Police, in answer to questions put by the Sub-Inspector, saying that he had filed a complaint in Court and that he had been dacoited by certain persons. The Police upon investigation found that the complaint was false, and the Deputy Superintendent charged the accused with having falsely charged Jagan Nath and others before the Sub-Inspector of Police with having committed dacoity, and he was put on his trial before the Sub-Divisional Officer of having committed an offence punishable under sec. 211 I. P. C. The High Court set aside the proceeding observing that *"as proceedings had been actually taken in Court and as Ghaslawan had made no report to the Police but had answered questions put to him by the Sub-Inspector, it was not competent for the Deputy Superintendent of Police to proceed against Ghaslawan, under sec. 195 of the Criminal Procedure Code, for an offence punishable under sec. 211, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, it is necessary for the initiation of those proceedings that there should be a complaint in writing of such Court. \* \* \** In fact, the reason for filing the complaint in Court instead of going to the Police was told by Ghaslawan to be that he expected to get no satisfaction out of the Police. Under these circumstances, it is impossible to say that, when Ghaslawan made his statement to the Sub-Inspector, he was moving the Sub-Inspector to do anything or that he was charging the thirteen persons of an offence. He had already charged them, and the case was pending in the Court of the Magistrate." After setting aside the proceeding the Court observed, "These of course, will not prevent the initiation of any proceedings by the Magistrate before whom

Ghaslwan complained, if that Magistrate think fit to take action."

151. Now<sup>1</sup> the question arises, what is meant by the word "proceeding." The word "proceeding," <sup>Meaning of the word "proceeding."</sup> is wide enough to cover a proceeding under contemplation before a Criminal Court though it may<sup>2</sup> not have begun when the offence was committed. See the case of *In re Vasudeo Ramchandra Joshi*, (1922) 24 Cr. L. J. 171 : s. c. 71 I. C. 523, (Bom).

The words "in relation to any proceedings" in sec. 195, cls. (a) and (b) of the Criminal Procedure Code are very general and wide enough to cover a complaint made to a Court on which no proceeding may have been commenced by the Magistrate. See the case *Chufhermal v. R.*, (1929) 117 I. C. 147 : s. c. 30 Cr. L. J. 732, (Sind).

152. In the case of *Parameswaran Nambudri*, (I. L. R. 39 Mad. 677, 679), Ayling, J., said, "I see no reason why this safeguard (complaint by Court) should be limited to cases where the offence is committed *pendenti lite* and should not extend to cases of fabrication of false evidence in advance. Its desirability is just as great in the one case as in the other. *It is, of course, necessary that the "proceedings" in any Court referred to in the clause should be actually instituted before the Criminal Court is asked to take cognizance of the offence.* If it is not, there is nothing in sec. 195 to prevent the Court from taking cognizance of the case. And once the Court has lawfully taken cognizance of the case, its jurisdiction is not affected by the subsequent coming into existence of a circumstance which would have barred its jurisdiction if it had existed at the time of institution."

153. In the amended Code of 1923, the wording of sec. 195 (1) (b), has been altered. In the old section the words were "when the offence is committed in, or in relation to etc.," whereas the present wordings are "when the offence is *alleged* to have been committed in, or in relation to etc."

154. These word have been substituted probably to meet the criticism of Piggott, J., in *R. v. Bhawani Das*, (1915) L L. R. 38 All. 169, 172. It was pointed out by him that the wording of sub-section somewhat lacks precision. "To forbid a Court 'to take cognizance' of an 'offence committed by a party' is open to the criticism that no Court can decide whether an offence was committed or not, until after it has taken cognizance. It seems necessary, therefore, to read the word 'committed' as equivalent to the expression 'alleged' to have been committed."

155. The decision of the case of *Daroga Gope v. R.*, (1925) L L. R. 5 Pat. 33 ; s. c. 26 Cr. L. J. 1269, is instructive and important on this point. There the petitioner, Daroga Gope, on the 5th January 1925, laid an information before the Police complaining that his landlord and others had forcibly carried off nine maunds of paddy from his house. The investigating Police Officer reported the case to be false, and on the 3rd February under the orders of the Inspector, he submitted a formal complaint charging Daroga Gope, the petitioner, with offences under secs. 182 and 211. In the mean time on the 23rd January the petitioner filed a formal complaint before the Sub-Divisional Magistrate repeating the allegations made in his information to the Police. On the 6th February, 1925, the Sub-Divisional Magistrate, after persusing the Police report dismissed the complaint under sec. 203 Cr. P. C., and on the same day, he passed the following order on the Sub-Inspector's written complaint of the 3rd February : "Summon Daroga Gope under secs. 211-182, Indian Penal Code for 24th February 1925."

The case came up in revision before the High Court. It was urged that the prosecution cannot proceed without the written complaint of the Magistrate who took cognizance of the petitioner's complaint on the 25th January. The High Court observed, "In the present case the recording of the complaint of the 25th

"Committed in relation to a proceeding."

January was a judicial proceeding, and the first question is whether laying a false information before the Police on the 5th January was an offence committed in, or in relation to, the complaint which was lodged by the petitioner before the Sub-Divisional Magistrate on the 25th January."

"Admittedly the offence was not committed in the judicial proceeding. But was it committed 'in relation' to it? \* \* \* \* It is clear that some of the offences enumerated in the clause are capable of being committed *in relation to a judicial proceeding which did not exist*. False evidence, for instance, may be fabricated for a contemplated suit or property may be fraudulently concealed in contemplation of an execution proceeding. *The clause applies if the judicial proceeding is in existence at the time when it is sought to prosecute the offender for the offence in question.*"

"With regard to a false information to the Police, it may be argued that the offence is a contempt which cannot possibly be said to have been committed 'in relation to' any subsequent contempt, each repelition being a separate independent and complete act. On the other hand *if two offences are even remotely connected by the relationship of cause and effect, then the first may be said to have been committed in, or in relation to the second*. It may be that the commission of the latter offence may never have been intended, but if it is in fact the consequence of the former offence then sec. 195 applies. Here it may be said that the laying of the false charge on the 5th January caused the Police to submit a report against the petitioner which in its turn caused the petitioner to institute a judicial proceeding before the Sub-Divisional Magistrate by lodging the complaint of the 25th January and that therefore the offence of the 5th January was committed in relation to a judicial proceeding.\* This was the line of reasoning in *R. v. Hardwar Pal*, (1912) 1 L. R.

\* See the case of *Nazir Ahmed v. R.*, (1926) 100 I. C. 708 : s. c. 28 Cr. L. J. 824, (C), *post* ¶ 160.

34 All. 522. On the other hand, in *Jagat Chandra Mazumdar v. R.*, (1899) I. L. R. 26 Cal. 786, the offence of fabrication of false evidence was said to have been committed by a Police Officer in the course of an investigation; but it does not appear that any judicial proceeding followed as a result of that investigation and therefore it was held that no sanction under the Criminal Procedure Code of 1898 was required. In *Brown v. Ananda Lal Mullick*, (1917) I.L.R. 44 Cal. 650, (see *post* ¶ 159), a charge of theft was laid before the Police and was followed up by a complaint in Court upon which process was issued and a trial held. After his discharge in this trial the accused sought to prosecute the complainant for laying a false charge before the Police and it was held that this could not be done without a complaint under clause (b) of sec. 195 from the Court which discharged the accused. In *re Parameswaran Nambudri*, (1915) I. L. R. 39 Mad. 677, the difference between clause (c) and clause (b) of sec. 195 was pointed out and it was held that clause (b) was applicable in a case where the offence of fabricating false evidence was committed in respect of a promissory note before the institution of a civil suit for its enforcement and where the application to prosecute the offender under sec. 193, Penal Code, was made after the institution of such suit. In *Shaikh Muhammad Yassin v. R.*, (1924) I. L. R. 4 Pat. 323, a complaint was lodged before the Magistrate after the Police had reported the information lodged by him to be false. It was sought to prosecute the complainant for laying a false charge before the Police without a complaint in writing by the Magistrate who took cognizance of the complaint. It was held that sec. 195 applied."

" \* \* \* \* Therefore, in the present case the order of the Sub-Divisional Magistrate of the 3rd February summoning the the petitioner under sec. 211, Penal Code, was without jurisdiction on the ground that the offence was committed in relation to a judicial proceeding instituted before the Sub-Divisional Magistrate on the 25th January and that the

complaint in writing of the Court was necessary under clauses (b) of sec. 195."

The same view was taken in *Shatkh Muhammad Yassin v. R.*, (1924) L. L. R. 4 Pat. 323. There the information was lodged with the Police and the Police on inquiry reported it to be false, but the informant, by an application to the Magistrate, insisted on a judicial investigation. It was held that the informant was deemed to have preferred a complaint to the Magistrate and that a sanction (now a "complaint") by the Court itself under sec. 195 (1) (b) Cr. P. C., is requisite before cognizance of an offence punishable under sec. 211 L. P. C., can be taken in respect of the false charge made to the Police, irrespective of whether the Magistrate has investigated the complaint or not.

The learned Assistant Government Advocate sought to distinguish *Tayebulla's* case and *Brown's* case on the ground that the complaint was not investigated by the Court. Ross, J., said, "To my mind that cannot make any difference in favour of the prosecution. The complainant was entitled to have his complaint inquired into and the fact that no inquiry was made cannot be made a merit in the prosecution. The absence of an investigation cannot be made a ground of distinction. The point is that by making his complaint to the Court, the informant has withdrawn the information from the category of mere police proceedings and has raised it to a category of a proceeding in Court. This necessitates a complaint by the Court if the informant is to be proceeded against. The matter is no longer in the hands of the Police but is within the cognizance of the Court itself."

In the case of *Chufhermal v. R.*, (1929) 117 L. C. 147; 30 Cr. L. J. 732, (Sind.), it has been held that when a false information is given to the Police and at the same time a complaint is made to a Magistrate on the same facts and the same charge, a complaint in writing by such Magistrate under sec. 195, Criminal Procedure Code, is



essential for the prosecution of the complainant even though the Magistrate may have taken no further proceedings on the complaint presented to him subsequent to the information to the Police. Under such circumstances a trial without such a complaint is bad. This case has relied upon the cases of *Tagebulla*, see post ¶ 158; *Brown*, see post ¶ 159; *Sheikh Samir*, see ¶ 165; *Ram Chand v. R.*, (1928) 115 L. C. 313; s. c. 30 Cr. L. J. 399, (Sind); *Murugan*, see post ¶ 291; *Maung Pe v. Maung Chaw*, (1928) 112 L. C. 466; s. c. 29 Cr. L. J. 1044; and *Muhammad Yassin*; see *supra*.

156. In the case of *Ramdhart Gope v. R.*, (1928) 110 L. C. 212; s. c. 29 Cr. L. J. 660, (Pat), the accused lodged an information of arson before the Police. The Police reported the charge laid by him to be false and asked for his prosecution under sec. 211 I. P. C. This report was put up before the Magistrate on the 18th July, on which date the Magistrate accepting the police report summoned the accused under sec. 211 I. P. C., fixing the 3rd August for appearance. On the 25th July, the accused filed a *naraji* petition (*i. e.*, a petition impugning the correctness of the police report) before the Magistrate requesting him that the complaint laid by him may be proceeded with. After a week the Magistrate passed the following order upon this petition :—

“The petitioner is already being proceeded against under sec. 211 I. P. C. Keep this pending till the decision of the other case against the petitioner.”

On the 18th August, the Magistrate committed the accused to the Court of Session. Then on the 21st October the accused moved the Sessions Judge of Monghyr to quash the commitment and to have his complaint of the 25th July, legally disposed of. This was rejected mainly upon the ground that the accused (petitioner) came too late. Afterwards the accused moved the High Court for quashing the order of commitment.

The High Court quashed the order of commitment holding

that the petition filed by the accused before the Magistrate amounted to a complaint within the meaning of sec. 4 (f) of the Criminal Procedure Code which had to be disposed of before an action against the accused could be taken under sec. 211 I. P. C., and *the commitment* of the accused before the disposal of the petition was consequently illegal. The High Court directed that the complaint of the accused, dated the 25th July, be disposed of in accordance with law.

Jwala Prasad, J., remarked, "It is true that the Magistrate was competent to take cognizance of the offence under sec. 211 upon the police report under sec. 190 (b) Cr. P. C., and that it is not essential, though desirable, to give an opportunity to the complainant to prove his case before him; but if the complainant aggrieved by the police report files a petition of protest and desires his case to be inquired into by a Magistrate he takes the case out of the hands of the Police and subjects himself to the Magistrate. In other words *the case ceases to relate to a police proceeding, and it appertains to a proceeding before the Court.* Thus the complaint lodged before him would bring the case under sec. 195 (1) (b) of the Code of Criminal Procedure which requires complaint of the Court for prosecution of the complainant in case his complaint is found to be false. That provision of the Code of Criminal Procedure contained in sec. 195 is imperative and it affects the jurisdiction of Courts to take cognizance of an offence under sec. 211 except as set forth therein." This case followed the case of *Muhammad Yassin v. R.*, see *ante* ¶ 155.

It is worthy of note that the Investigating Police Officer sent up by this case under secs. 332 and 394 I. P. C., which are not covered by sec. 195 Cr. P. C., but which are closely connected with the offence under sec. 186 I. P. C.

157. In *R. v. Ukha Mahadu Barase*, (1927) 29 Cr. L. J. 225 : s. c. 107 L. C. 54 (Bom), the accused made a complaint

to the Police which was found to be false and he was committed for trial to the Sessions Court for an offence under sec. 211 I. P. C. After the committal order was passed and on the same day the accused made a similar complaint to the Magistrate and contended before the Sessions Court that the committal proceedings should be quashed as there was no complaint in writing by the Magistrate within the meaning of sec. 195 Cr. P. C. It was held by the High Court on reference that the principle that where a complainant makes a complaint to the Police and subsequently makes a similar complaint to the Magistrate, the complaint to the Police merges in the complaint to the Magistrate and the complainant cannot be prosecuted for having made a false accusation without a complaint by the Magistrate, was not applicable to the case inasmuch as there was no complaint to the Magistrate at the time of the committal order, and that the committal order was, therefore, perfectly valid. Fawcett, J., added, "In our opinion it was not open to the accused in this case to make the committal order invalid by merely making a subsequent complaint to the Magistrate. There is nothing in the Code which would justify the principle adopted by the Calcutta and Patna High Courts being applied to a case of the present kind; and in the absence of some specific provision such as sec. 195, Cr. P. C., to prevent the Sessions Judge exercising the jurisdiction, he clearly has power to try the case."

158. In *Tagebulla's* case, (1916) L. L. R. 43 Cal. 1152, the complainant who had laid an information before the Police, reported to be false, did not file any complaint impugning the correctness of the police report and praying for judicial inquiry or trial, but the Magistrate, on receipt of the police report, passed an order, on the 12th February: "Complainant to prove his case." The Magistrate then examined witnesses, as to the truth of the original charge, on 18th March, and directed the Police "to adduce evidence on 5th April to prove that the case was maliciously false"; and on the latter date after hearing further witnesses, the Magistrate recorded an order

dismissing the "complaint" under sec. 203 Cr. P. C., and under the old law granted sanction for the prosecution of the complainant. The High Court held that where a person who has laid an information before the Police, reported to be false, has not subsequently applied to the Magistrate for an investigation or has not impugned the correctness of the police report and prayed for a trial, he has not made a 'complaint' within the meaning of sec. 4 (h), and there is therefore no occasion for any Court to complain.

159. Applying the principle laid down in the cases of *Tayebulla v. R.*, it was held in *Brown v. Ananda Lal Mullick*, (1916) 1 L. R. 44 Cal. 650, that where an information to the Police followed by a complaint to the Court, based on the same allegations and the same charge, and such complaint has been investigated by the Court, the complaint of the Court itself is necessary even for a prosecution of the informant, under sec. 211 I. P. C., in respect of the false charge made to the Police. This ruling was followed in *Sheikh Samir v. Sajidar Rafiman*, (1926) 1 L. R. 53 Cal. 824, where complaint to the Magistrate, was based more or less on the same allegations as were contained in his information to the Police. See *post* ¶ 165.

160. In *Nazir Ahmed v. R.*, (1926) 100 I. C. 708: 28 Cr. L. J. 324 (Cal), a case of theft against one Nawab Ali, was instituted by Nazir Ahmed by giving a false information to the Police. The Police inquired into the case and sent up Nawab Ali who was committed to the Sessions. The Sessions Judge found the case false and complained against Nazir Ahmed under sec. 476 Cr. P. C. The Calcutta High Court held that the Sessions Judge had jurisdiction to make the complaint and that the words "in relation to" in sec. 476 of the Criminal Procedure Code, are sufficiently wide to cover a case where the offence complained of is actually committed before the proceedings began in the complaining court. The High Court observed, "In the present

The words "in relation to" cover an offence actually committed before the proceedings began in the complaining court.

case the proceeding was the trial of Nawab Ali for theft by the Sessions Court and that Court found that the charge was false and hence that the charge made to the Police was false. The false charge to the Police was obviously a matter *related to the proceedings in the Sessions Court for it was the basis of the proceedings.* Had there been no charge to the Police there would have been no proceedings in the Sessions Court."

161. The view of the Allahabad High Court in *Prag Datt Tiwari v. R.*, (1928) 29 Cr. L. J. 938 : s. c. 111 L. C. 853 (All), is in conflict with the view of the Calcutta High Court. In this case it was held that a person who prefers a false charge to the Police, and subsequently lodges a complaint in Court, which is dismissed, can be prosecuted for the offence under sec. 211 L. P. C., without any complaint from the Court which dealt with his complaint. In such cases the offence under sec. 211 is complete when the false report is made to the Police, and it cannot be said to have been committed in relation to any proceedings in Court, simply because a complaint was subsequently filed.

162. In *R. v. Hardwar Pal*, (1912) 1 L. L. R. 34 All. 522, Hardwar made a report against several persons, including one Sher Bahadur, at a Police station charging them with rioting and voluntarily causing hurt. The Police made inquiry and sent up several persons for trial, but not Sher Bahadur. Some of them were convicted by the Magistrate, but acquitted by the Sessions Judge. Thereupon Sher Bahadur made a complaint to the Magistrate, charging Hardwar with having made a false report in respect of himself to the Police. The Magistrate took cognizance of the complaint. It was held that the offence, was one committed *in relation to* a proceeding in Court. The High Court observed, "It is obvious that there is a considerable *relation* between the first report and the proceeding in Court ; for the latter is the result of the

When on a police report some of the accused are sent up but acquitted ; the person not challanged by Police must obtain the complaint of the Court.

former. The report laid to the Police Inquiry and the latter to the proceeding in Court. \* \* \* \* The argument that there was a separate complaint made to the Police against each of the persons named in the report is the mere splitting of a hair as well as a of a report. There was one report which laid to a proceeding in Court." It was held that the sec. 195 (1) (b) was applicable.

In the case of *R. v. Gurditta*, (1916) 39 L. C. 692; s. c. 18 Cr. L. J. 548, the accused made a report to the Police <sup>Complaint by public prosecutor, —no complaint.</sup> against seven persons, five of whom were sent up for trial in a Magistrate's Court, and the other two were not sent up, and the charge against the accused was that he had brought a false case against those two persons. The Deputy Superintendent of Police directed the Public Prosecutor to prosecute the accused regarding the charge which he had brought against the said two persons before the Police. On this the Public Prosecutor filed a complaint against the accused to that effect, and the accused was committed for trial by the Magistrate. It was held by the Punjab Chief Court that the offence, under sec. 211 I. P. C., if any, committed by the accused was committed by him *in relation to a proceeding in Court*, and that as the complaint of the Court was not obtained and there was no complaint by it, the Committing Magistrate had no power to take cognizance of the offence and that the complaint by the Public Prosecutor was not equivalent to a complaint by the Court. But see ¶ 138, p. 109.

163. In *Dharmadas Kavar v. R.*, (1908) 7 C. L. J. 373, a false information was given at the thana regarding the death of a girl. The informant, the chowkidar, named Khetra Duby was directed to be prosecuted under secs. 182 and 211 I. P. C. The complainant Abdul Jabbar then applied directly to the Sessions Judge for sanction to prosecute the petitioners Dharmadas Kavar and Awlat Kayal. The order of the Sessions Judge was as follows:—"There can be no reasonable

doubt that Dharmadas Kavar and Awlat Kayal instigated the chowkidar to lodge this information". He accordingly directed that they be prosecuted under sec. 211 with Khetra Duby.

The High Court said, "The offence, if any, was committed before the Police and not before any Court, or in the course of any judicial proceeding or of any proceeding in any Court. The Sessions Judge had, therefore, no jurisdiction to make it, either under sec. 195 (b) or sec. 476 Cr. P. C."

But if the informant, upon the Police reporting the information to be false, subsequently moved the Magistrate for a judicial inquiry, he must be taken to have preferred a complaint and sec. 476 would then apply.

164. It was held in *Po Hlaing v. Ba E*, (1911) 15 I. C. 981 : s. c. 13 Cr. L. J. 565 : 6 Low. Bur. Rep. 50, that though, as a rule, no sanction (now "complaint") is required to prosecute for making a false charge to the Police, yet where, after the rejection of a complaint by the Police as false, the complainant complains to a Magistrate, who, after full inquiry, discharges the accused, the latter cannot prosecute the complainant merely for the false charge made to the Police but must obtain the Magistrate's sanction (now "complaint") before prosecuting.

165. In *Sheikh Samir v. Sajidar Rahman*, (1926) I. L. R. 53 Cal. 824, where the opposite party, Sajidar Rahman,

on the 18th February, 1925, lodged an investigation in a counter case, "complaint" if necessary, information before the Police, to the effect that the petitioners and others had on the 16th February, snatched away two bags containing currency notes. The Police submitted a report on the 2nd March, but Sajidar Rahman not being found in Calcutta, the Deputy Commissioner of Police ordered on the 2nd April 1925, that the petition should be filed. On the 9th April, the petitioner filed a complaint against the accused Sajidar Rahman under sec. 211 I. P. C., before the Chief Presidency Magistrate who issued process against Sajidar Rahman on the 4th May 1925. Thereupon Sajidar Rahman appeared and laid a complaint against the petitioner, on the 10th June 1925, and the

petitioner was charged with offences under secs. 403 and 420 I. P. C. Both the cases were transferred to a Presidency Magistrate who after taking evidence acquitted the petitioner Sheikh Samir and then discharged the opposite party, holding that the case by the petitioner against the accused should not be proceeded with, having regard to what he had found in the counter case.

The case coming up before the High Court on revision the Judges discharged the rule observing, "It appears to us that the allegation in two cases were more or less the same and, therefore, no prosecution under sec. 211 of the Indian Penal Code, is sustainable without complaint being first made by the Court which tried the case of the accused against the petitioner."

166. In connection with this subject, the legal position of a petition of protest against the police report about a case (usually called a *naraji* petition in Bengal) is a "*Naraji* petition is a complaint." is to be considered. Generally these petitions are filed more with the object of impugning the correctness of the police report than as a complaint for the offences alleged to have been committed but they usually end by a prayer demanding an investigation on the evidence mentioned in the petition. Such petitions have been held under the definition of the word "complaint" as given in the Code of Criminal Procedure. For the definition of the word "complaint", see p. 51.

167. In *Jogendra Nath Mookerjee v. R.*, (1905) I L R. 33 Cal. 1, the petitioner on the 22nd May, 1905, lodged an information at the police station against two persons under sec. 436 I. P. C. The Police after investigation reported the charge as false. The petitioner then, on the 29th May, presented a petition to the Sub-Divisional Magistrate impugning the correctness of the police report and praying that the persons accused by him might be brought to trial. "The petition in question (of the 29th May) does not appear to be," as observed by the High Court, "such a petition as is according



to the practice in the mofussil regarded as a complaint. That expression, according to the practice in the mofussil, is considered to be applicable to the application which a petitioner, who has not complained to the Police, makes to the Magistrate informing him of the commission of an offence by certain persons and naming the witnesses he wishes examined in support of his complaint." The contention of the Magistrate to show cause in this case was that the applicant's petition of the 29th May was not a complaint under sec. 203 of the Code of Criminal Procedure, but was merely a petition presented to him with reference to police inquiry. The High Court said, "*The definition of complaint contained in sec. 4 (h) of the Criminal Procedure Code is a very wide one, and may be held to cover a petition such as was presented by the petitioner to the Sub-Divisional Magistrate on the 29th May last. Further, it has undoubtedly been laid down in the cases cited on behalf of the petitioner that a petition presented to a Magistrate in the course of a police inquiry is a complaint, which must be dealt with under sec. 203 of the Criminal Procedure Code before a prosecution under sec. 211 of the Indian Penal Code can be instituted against the person, who presents it.*" See also *Lalji Singh v. Pardip Singh*, (1917) 41 L. C. 130: s. c. 18 Cr. L. J. 754 (Pat). For *naraji* petition, see Chapter XI.

168. The question now arises as to which Court is to complain of the offence: As a general rule, the complaint should be made by the Court before which the offence is alleged to have been committed or by a Court to which such Court is subordinate.

169. The expression "Court" is nowhere defined in any of the Codes, but it has been interpreted in the Evidence Act, where a "Court" is stated to "include all Judges and Magistrates and all persons, except arbitrators, legally authorised to take evidence." But the interpretation of the word in the Act is for the purpose of that Act, and does not apply to other Acts, nor is it a definition of the word.

170. In the case of *Nanda Lal Ganguli v. Khelra Mohan Ghose*, (1918) L. L. R. 45 Cal. 585, the Calcutta High Court observed, "It has been held by this Court that the word 'Court' in sec. 195 has a wider meaning than a 'Court of Justice' as defined in the Indian Penal Code. It may include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter in order to enable it to arrive at a determination."

171. In the case of *Saadut Ali Khan v. R.*, (1907) 11 C. W. N. 909, a Commissioner was appointed to examine a witness under sec. 503 Cr. P. C. Subsequently the Deputy Magistrate who examined the witness on commission, being applied to, granted sanction under the old Code of Criminal Procedure, for the prosecution of the witness under sec. 193 I. P. C. There the question arose whether the Commissioner was a "Court" within the meaning of sec. 195 Cr. P. C. It was held, by the High Court that although a Commissioner for the examination of a witness under sec. 503, Cr. P. C., may be a Court within the meaning of that section for the purpose of issuing process against the witness and for recording his evidence, still it is not a Court within the meaning of sec. 195 (1) (b) Cr. P. C. The word "Court" in sec. 195 (1) (b), must mean *the Court whose duty it is to consider evidence and to decide whether it is true or false*. This seems to be the correct interpretation of the word "Court."

172. So in *Raghoobuns Sahoy v. Kokil Singh*, (1890) L. L. R. 17 Cal. 872, it was held that a Collector, acting in appraisal proceedings under secs. 69 and 70 of the Bengal Tenancy Act, is a "Court." See also the case of *Chandi Charan Giri v. Godadhar Pradhan*, (1917) 22 C. W. N. 165.

Where a District Magistrate receives information of illicit possession of arms and issues a search warrant in consequence of the information, he acts as a Court and also in his executive

The word "Court" in sec. 195 has a wider meaning than the words "Court of Justice" as defined in the Penal Code.

"Court" in sec. 195 — what it means.

Collector when acting under secs. 69 and 70 of the B. T. Act is a "Court."

capacity, and if such a false information is given to the District Magistrate it is given to the "Court." Any complaint by such a Magistrate is to be quashed by the Sessions Judge to whom he is subordinate: *Gaddem Panchajani v. Sura Chinna*, (1918) 1 L. R. 42 Mad. 96.

In *re Punamchand Maneklal*, (1914) 1 L. R. 38 Bom. 642 : s.c. 15 Cr. L. J. 581, (F. B.), it has held that an Income-Tax Collector, when acting under Chapters IV and V of the Income-Tax Act, is a 'Revenue Court' within the meaning of sec. 195 Cr. P. C. The Full Bench in this case observed, "The term 'Revenue Court' is not in general use, but it has been used occasionally by local Legislatures in this country in connection with the decision of questions relating to revenue by officers specially and exclusively empowered to decide them. See, for example, the City of Bombay Revenue Act and the Revenue Code of Oudh, the United Provinces and the Punjab (U. P. Act II of 1901, secs. 59—62 ; U. P. Act III of 1901, sec. 189 *et seq.* ; Oudh Act XXII of 1886, sec. 109 ; the Punjab Act XVI of 1887, sec. 101). Speaking generally, revenue questions are removed from the cognizance of Civil Courts and the officer charged with the duty of deciding disputed questions relating to revenue between the individual and the Government would be invested with the functions of a Revenue Court. The inquiries into such questions assigned to officers empowered *eo nomine* as 'Revenue Courts' in the United Provinces are entertained and disposed of by corresponding officers in Bombay under Chapters XII and XIII of the Bombay Land Revenue Code of 1879, though the word 'Revenue Court' is not to be found anywhere in those Chapters. We have no doubt that the Bombay inquiries would be equally proceedings in Revenue Courts in the sense in which that term is used in the definition clause of sec. 195 Cr. P. C. We also think that inquiries conducted according to the forms of judicial procedure under Chapter IV of the Income-Tax Act and execution proceedings under Chapter V (which

Income-Tax Collector, whether a Revenue Court.

provides that an order passed by a Collector on a petition under Chapter IV shall have the force of a decree of a Civil Court in suit in which the Government is the plaintiff and the defaulter is the defendant) are proceedings in a Revenue Court."

In *Lachhman Prasad Joshi v. R.*, (1929) 31 Cr. L. J. 679 : s. c. 124 I. C. 364, (Oudh), it was held that a Revenue Officer conducting mutation proceedings on a disputed succession under the provisions of sec. 40 of the U. P. Land Revenue Act, 1901, acts as a Revenue Court within the meaning of sec. 48 of the said Act and has power under sec. 478, Cr. P. C., to commit to Sessions a person who has committed an offence before him in the course of such proceedings.

In *re Thadi Subbi Reddi*, (1930) 32 Cr. L. J. 219 : s. c. 59 M. L. J. 229, the Madras High Court held that according to r. 14 of the Rules made by the Local Government in pursuance of sec. 43 (1) of the Co-operative Societies Act, the Assistant Registrar of Co-operative Societies is a "Court" within the meaning of sec. 195 (b) Cr. P. C.

In *R. v. Salig Ram*, (1930) 1 L. R. 52 All. 1018, it was held that a Village Panchayat, constituted under the United Provinces Village Panchayats Act, 1920, is a Civil Court when it is exercising jurisdiction over civil matters and is, in such cases, subordinate to the principal Court having ordinary original civil jurisdiction in the district, namely the District Judge, according to the provisions of sec. 195 (3) Cr. P. C. The provisions of secs. 70 and 71 of the United Provinces Village Panchayats Act, 1920, do not make a Village Panchayat, exercising jurisdiction over civil matters, a Court subordinate to the Collector's Court within the meaning of sec. 195 (1) (b) and (c) of the Criminal Procedure Code.

173. In the case of *J. C. Galstaun v. Banku Behary Dhar*, (1927) 31 C. W. N. 825 : s. c. 28 Cr. L. J.

Land Acquisition  
Deputy Collector is  
not a "Court."

809 : 104 I. C. 249, a question arose whether

a Land Acquisition Deputy Collector is a Court. Cumming, J., observed, "... His function really is to

ascertain on behalf of the Government what is the value of the property which the Government proposes to acquire and to make an offer to the party. In doing so he is allowed, as has been pointed out in the case of *Expa v. Secretary of States for India*, (1905) 1 L. R. 32 Cal. 605; s. c. 9 C. W. N. 454; 32 L. A. 93, (P. C.), to import his own knowledge into the matter. In the case of *Durga Das Rukhitt v. R.*, (1900) 1 L. R. 27 Cal. 820, (with special reference to p. 826), a question arose as to whether a Deputy Collector under Land Acquisition Act was or was not a judicial officer or a Court. In that case the question was whether his sanction was or was not required under sec. 195, Cr. P. C.; and it was held that he could not be regarded as a Court.

174. A Sub-Registrar or a Registrar under the Indian Registration Act, 1877, is expressly under  
A Sub-Registrar is not a "Court." sub-sec. (2) of sec. 195 Cr. P. C., in not a Court.

175. In *Kanhatya Lal v. Bhagwan Das*, (1925) 1 L. R. 48 All. 60, 65, the Allahabad High Court observed, "The expression 'Court' in sec. 195, is of a wider scope than the expression 'Civil, Revenue or Criminal Court' in sec. 476." This is made particularly clear by the amendment of sec. 195 sub-sec. (2), which was made by Act XVIII of 1923. It reads: "In clauses (b) and (c) of sub-sec. (1) the term 'Court' includes a Civil, Revenue or Criminal Court." Obviously, therefore, the word 'Court' is of a wider meaning."

But in the case of *J. C. Galstaun v. Banku Behary Dhar*, the Calcutta High Court in holding that the Land Acquisition Deputy Collector is not a Court, observed that "reading sec. 476, Cr. P. C., together with sec. 195, Cr. P. C., it is difficult to see what would be the Court other than Civil, Revenue or Criminal Court contemplated by sec. 195, sub-sec. (2)."

176. The word "Court" is to be understood as bearing its natural meaning with the sense of continuity, this implies notwithstanding any change of officers. *Shalkh Bahadur v. Shalkh Eradutulla*, (1910) 14 C. W. N. 799; s. c. 1 L. R. 37 Cal. 642.

See also the case of *Faqir Singh v. R.*, (1928) A. I. R. 1928, Lah. 759 (2).

177. But where the Court of the City Magistrate is not a permanent Court with a perpetual succession of Judges, when he is transferred, his successor has no power to complain for a prosecution in respect of an offence committed before his predecessor. In such a case the Sessions Judge alone is competent to complain under sec. 195 of the Criminal Procedure Code: *Jia Lal v. Phogo Mal*, (1918) 44 I. C. 286 ; s. c. 19 Cr. L. J. 914: 1918 P. R. 22.

178. In the case of *Kasi Chunder Mozumdar v. Juggut Chunder Mozumdar*, (1880) I. L. R. 6 Cal. 440, 442, an offence

That Court is to complain before which the offence is committed.

is alleged to have been committed in a mortgage proceeding at Rajshahye Court relating to some Court in Pubna District which was then under jurisdiction of Rajshahye. Subsequently this Rajshahye District was divided, and the land, the subject of the mortgage proceeding was taken to form part of the District of Pubna. After the formation of this new district Juggat Chunder Mozumdar (mortgagor), applied to the District Judge of Pubna for leave to prosecute Kasi Chunder Mozumdar (mortgagee) under sec. 193 of the Penal Code. The District Judge of Pubna reviewing the proceedings which had taken place in the Rajshahye Court, gave his sanction to the criminal prosecution. Kasi Chunder then applied to the High Court to set aside the order of the District Judge. The High Court remarked that "the District Judge of Pubna appears to be under the impression that, because the land, which was the subject of the mortgage, has since been transferred to the jurisdiction of Pubna, the offence with which Kasi is charged must also be considered as having been committed before the District Court of Pubna. But this is clearly a mistake. The question is not within what jurisdiction the mortgaged property is now situate, but *before what Court the offence was committed*; and there is no doubt that the offence (if any) was committed before the

District Court of Rajshahye." The High Court held, therefore, upon that ground alone, the sanction given by the Judge of Pubna was illegal.

179. When a Court once abolished but re-established two years later with its territorial limits somewhat curtailed, is not "such Court" within the meaning of sec. 195 (1) (b) of the Code of Criminal Procedure, and the latter Court has no jurisdiction to complain for prosecution in respect of an offence committed before the former. *In re Appu Atta*, (1915) 31 I. C. 643 : s. c. 16 Cr. L. J. 787.

180. *In re Maneklal Garbaddas*, (1926) 99 I. C. 81 ; s. c. 28 Cr. L. J. 49, (Bom), it was held that the Court contemplated by secs. 195 and 476, Cr. P. C., is the Court before which the offence, the inquiry of which is contemplated is committed. The circumstance that a district is taken out from a particular Sessions Division and constituted a new Sessions Division under the provisions of the Criminal Procedure Code, does not give the newly constituted Sessions Court power to make a complaint relating to an offence committed at a trial before a Sessions Judge of the original Sessions Division. It is difficult to treat the new Sessions Division as successor to the old Sessions Division.

181. *In Muhammad Fakhr-Ud-Din v. Bhikhi Ram*, (1914) I. L. R. 36 All. 212 ; s. c. 23 I. C. 728 ; 15 Cr. L. J. 360, it was held that if a person who had been declared an insolvent and in respect of whose property a receiver had been appointed by the District Judge applied to the Court representing that one Bhikhi Ram had misappropriated certain property belonging to him and asking that Bhikhi Ram's house might be searched. The District Judge forwarded this application to the Magistrate and Bhikhi Ram was arrested and his house was searched. Subsequently, however, proceedings against Bhikhi Ram were dropped, there being no evidence against him. [Under the old Act, Bhikhi Ram applied to the District Judge for

A Court once abolished but re-established—the latter is not a "Court" within the meaning of sec. 195.

Complaint of a District Judge against an insolvent for offence committed in his Court.

for sanction to prosecute the applicant under secs. 182 and 211 of the Indian Penal Code. The sanction asked for was granted. It was held that as regards sec. 182, there was no objection to the order. Under the present law a 'complaint' by the Court is necessary. But as regards sec. 211 it was held that the criminal proceedings taken against Bhikhi Ram were not taken in the Court of the District Judge, and it was at any rate doubtful whether it could be said that the offence committed by the applicant was committed in relation to any proceeding pending in that Court.

182. The Court in relation to the proceedings before which the offence is committed must have, Court taking cognizance must have jurisdiction. however, jurisdiction to entertain it. In the case of *Gerimal v. Shewaram*, (1925) 95 I. C. 316 ; s. c. 27 Cr. L. J. 780 (Sind), it was held that the Court which can exercise the power conferred under sec. 476, is the Court which has jurisdiction over the case in which the alleged offence has been committed whether such case was *instituted* in such Court or *came to its file by transfer* from any other Court or otherwise."

183. In *Bengali Gope v. R.*, (1926) I. L. R. 5 Pat. 447 : s. c. 94 I. C. 896 : 27 Cr. L. J. 704, the petitioner was committed to the Court of Session for trial under sec. 211 I. P. C., on the charge of Complaint by a Court having no jurisdiction to entertain the case—proper course is to return for presentation before a competent Court. having presented a false complaint of murder before the Sub-Deputy Magistrate of Dinapore under sec. 190 cl. (2) Cr. P. C. The Sub-

Deputy Magistrate was authorised by the Magistrate of Dinapore to entertain complaints during the absence of the Sub-Divisional Magistrate. The Sub-Deputy Magistrate was not competent to take cognizance of the complaint and the proper procedure for him to adopt was to return the complaint under sec. 201 Cr. P. C., for presentation to the proper Court with an endorsement to that effect. He, however, sent the complaint to the Police for inquiry



and, on their reporting the case to be false, he dismissed the complaint under sec. 203 without examining the complainant on oath. It was held that the proceedings were void *ab initio*; and there was no basis in law for the present prosecution. Section 529 Cr. P. C., says that

Sec. 529 Cr. P. C.

if any Magistrate not empowered by law to take cognizance of an offence under sec. 190, sub-sec. (1), cl.

(a) or cl. (b), erroneously in good faith takes such cognizance, his proceedings shall not be set aside merely on the ground of his not being so empowered. "That section saves

No prosecution for false complaint before a Magistrate having no jurisdiction.

proceedings before a Magistrate taking on a complaint of which cognizance is taken without authority; but this will not have the effect of making the complainant liable for prosecution for a false complaint by reason of the Magistrate's having taken cognizance of it, without power to do so." See also the case of *Banti Pande v. R.*, (1929) 129 L. C. 87 : s. c. 32 Cr. L. J. 210, (Pat.).

184. Again, in *Dharmadas Kavar v. R.*, (1908) 7 Cal. L. J. 373, a false information was given at the Thana regarding the death of a girl. The Police after making an investigation reported the case to be false. The Magistrate ordered the prosecution of the informant, Khetra Duby, who was a chowkidar, under secs. 182 and 211 I. P. C. On an application by the opposite party, the Sessions Judge, according to the law then prevailing, sanctioned the prosecution of two other persons by the following order:—"There can be no reasonable doubt that Dharmadas Kavar and Awlat Kayal instigated the chowkidar to lodge information. I direct that they be prosecuted under sec. 211 with Khetra Duby." The High Court observed, "The offence, if any, was committed before the Police and not before any Court, or in the course of any judicial proceeding or of any proceeding in any Court. The Sessions Judge had, therefore, no jurisdiction to make it, either under sec. 195 (b) or sec. 476 Cr. P. C." This case was followed in *Jadu Nandan Singh v. R.*, (1909) 10 Cal. L. J.

564, and they were followed in *Tayebulla's* case, (1916) I. L. R. 43 Cal. 1152.

185. It has been held in *Narain Das v. R.*, (1927) 28 Cr. L. J. 549 : s. c. 102 I. C. 485, (All), that an Additional Judge to whom an appeal against an order refusing to make a complaint is transferred by the District Judge, is competent to make a complaint. The High Court said, "But it is to be remembered that in view of the decision in *Banwari Lal v. Jhunka*, (1925) 92 I. C. 454 : s. c. 24 A. L. J. 217 : 27 Cr. L. J. 278, the proceedings taken by a Civil Court under sec. 476, of the Criminal Procedure Code, are to be deemed as proceedings of a civil nature and are, therefore, governed by the rules relating to civil cases. By sec. 8 of the Civil Courts Act (Act XII of 1887), Additional Judge is competent to discharge any of the functions of a District Judge which the District Judge may assign to him, and in the discharge of those functions the Additional Judge is competent to exercise the same powers as the District Judge. If the District Judge was competent to make a complaint against Chuttan Lal and Nand Kishore, the Additional Judge, to whom the District Judge transferred the appeals filed by Nathu Mal, was equally competent to make a complaint."

186. In *Bhajan Tewari v. R.*, (1915) I. L. R. 37 All. 334, a false petition was submitted before the Assistant Collector who ordered prosecution of the applicant for an offence under sec. 182 I. P. C. It was held that he had no power to do so. Chamier, J., said, "It is quite clear that the Assistant Collector to whom these applications were presented was a public servant, and I will assume that a charge might properly be brought against Bhajan Tewari under sec. 182 I. P. C., in respect of the statements made by him in his third petition. \*\*\* The Assistant Collector has the power of a Magistrate of the first class ; but the application was not made to him as a Magistrate, it is clear that it was not made to him as a Revenue

The Court complaining about false petition must have jurisdiction to entertain it.

Court, and it is beyond question that even if the officer in question could be regarded as a Criminal or Revenue Court, the alleged offence was not committed before him or brought under his notice in the course of any judicial proceeding of a Criminal or Revenue Court. The question is whether the Assistant Collector was, or had the powers of a Civil Court in respect of the application made by Bhajan Tewari. The rules made by the Local Government, \* \* \* \* contain provisions authorizing a Collector to make over to any Assistant Collector of the first class any of the powers and duties conferred by the rules upon the Collector with certain exceptions. It seems that in respect of powers and duties delegated by the Collector to an Assistant Collector of the first class the latter may be a Civil Court, for sec. 70 of the Code of Civil Procedure authorizes the Local Government to make rules conferring upon a Collector or any gazetted subordinate of the Collector all or any of the powers which the Court, that is, the Civil Court, might have exercised in the execution of the decree, if the execution had not been transferred to the Collector. Among the powers of a Collector which may not be delegated to an Assistant Collector under the rules are the powers to order a sale under paragraph (1) (c) and certain other paragraphs of the third schedule to the Code of Civil Procedure and the power to confirm a sale or set aside a sale under rule 32 of the rules made by the Local Government. It thus appears that the Assistant Collector who has ordered the prosecution of the applicant had not power either to sell the property as a Court or to confirm the sale or to set it aside. The application in respect of which the prosecution has been ordered was presented to the Assistant Collector. Possibly no objection could be taken to this; but the Assistant Collector could not deal with the application. He could only pass it on to the Collector who would then dispose of it with the powers of a Civil Court. It appears to me that so far as the application in question was concerned, the Assistant Collector had not powers of a Civil Court and

the application was not presented to him in the course of a judicial proceeding. That being so, I must hold that the Assistant Collector had no power to order the prosecution of the applicant. I, therefore, set aside his order." Therefore in such a case, the Assistant Collector is not competent to complain.

Complaint of offence committed during trial, matters compromised in appeal,—such compromise does not take away the jurisdiction of the trial Court to make a complaint.

187. In *Narain Das v. R.*, (see ¶ 185), it was held that when an offence is committed in Court *the mere fact, that in the Appellate Court the parties agreed to compromise the matter, or to get it decided by a reference to arbitration, or in accordance with the statement of a referee, cannot take away the jurisdiction vested in the trial Court to make a complaint under sec. 476, Cr. P. C.*, provided that Court is satisfied that "it is expedient in the interests of justice that such a complaint should be made." Although in this case the offence complained of was under sec. 193 I. P. C., the principle of the ruling is equally applicable to cases under secs. 182 and 211 I. P. C.

188. Where on a *complaint having been transferred* to another Court and dismissed under sec. 203, Cr. P. C., the Magistrate before whom the petition of complaint was filed took proceedings under sec. 211, I. P. C., by making a complaint under sec. 476, Cr. P. C., and transferred the same for action to another Magistrate, it was held that the Court before which complaint was filed had no jurisdiction to take proceedings under sec. 476, Cr. P. C. If a complaint under

Court not where the complaint is filed but where the case is tried.

sec. 476 is to be made in cases such as the present, it should be made by *the Court which tried the case and not by the Court before which the complaint was filed* and by which process was issued. See *Tarakeswar Mukhopadhyay v. R.*, (1925) 30 C. W. N. 504 : s. c. 53 Cal. 488, which followed the ratio of the decisions of *Jeebun Krista Shaw v. Benoy Krista Shaw*, (1901) 6 C. W. N. 35, and *Putlcam Ruidas v. Mahomed Kasem*, (1895) 3 C. W. N. 33.

189. Where, however, a case was sent to a Sub-Divisional Officer for inquiry and report and the Sub-Divisional Officer held the inquiry but did not send the report and on the other hand ordered the complainant to be prosecuted, it was held that the order was bad ; *vide Asmatulla v. R.*, (1899) 4 C. W. N. 366.

190. A Sub-Divisional Magistrate is not, under sec. 202 of the Criminal Procedure Code, subordinate to a Deputy Magistrate, appointed to act in the district, without definition of the local limits of his jurisdiction, who was in charge of the office of the District Magistrate at head-quarters during the latter's absence on tour, and such Deputy Magistrate cannot, therefore, after taking cognizance of an offence committed in the sub-division, and examining the complainant on oath, direct a local investigation by the Sub-Divisional Magistrate, nor can he thereafter dismiss the complaint, and order the prosecution of the complainant under sec. 476 of the Code of Criminal Procedure on such report, and the evidence taken at the investigation. Section 529 (f), Cr. P. C., does not, in the circumstances, confer jurisdiction on the Deputy Magistrate to make such orders of dismissal and prosecution, but vests the Sub-Divisional Magistrate with seisin of the case, and the latter alone can inquire into it, and pass final orders : *Bhiku Hossein v. R.*, (1922) L. L. R. 39 Cal. 1041 : s. c. 16 C. W. N. 885.

191. In *Sarba Mablon v. R.*, (1913) 17 C. W. N. 824, the petitioner Sarba Mablon, lodged an information with the Police, who reported it to be false. The petitioner made no complaint in Court, but the Sub-Divisional Magistrate on receipt of the police report passed the order ; "Complainant to prove his case," and made over the case for disposal to another Magistrate who ultimately made an order under sec. 476, Cr. P. C., against the petitioner. It was held that the order of the Sub-Divisional Magistrate and the proceedings held thereunder do not come within any of the provisions of

the Criminal Procedure Code, and the order for prosecution *was without jurisdiction*. "They do not come within the sec. 202, as there was no complaint: nor do they come under sec. 159 as they were not taken on a final report and not on a first information report." See also *Abdul Rafiman v. R.*, (1907) 7 Cal. L. J. 371; see below, ¶ 192.

It will appear that no doubt under sec. 159 of the Criminal Procedure Code, the Magistrate can himself proceed and has power to depute a Subordinate Magistrate, to hold a preliminary inquiry or otherwise dispose of the case. But there are two sorts of police reports contemplated under Chapter XVI of the Criminal Procedure Code;—one, under sec. 157, *i. e.*, a report of the cognizable offence suspected, generally called the first information report which is made before the investigation is commenced; the other, called a final report which is sent under sec. 173 when the investigation is completed. An inquiry can be made by a Subordinate Magistrate under sec. 159, Cr. P. C., on a police report submitted within the term of sec. 157, *i. e.*, a report before the completion of the police investigation and inquiry, but when such report is submitted after police investigation, the Magistrate has no jurisdiction to act under sec. 159, Cr. P. C. See *Moult Duxi v. Naurangi Lall*, (1900) 4 C. W. N. 351.

192. In the case of *Abdul Rafiman v. R.*, (1907) 7 Cal. L. J. 371, a criminal proceeding was instituted by a person before the Police who reported the case to be false, and the matter coming on before a Magistrate empowered to dispose of police reports, he made an order making over the case to another Magistrate for judicial inquiry. This Magistrate after holding a judicial inquiry as directed submitted a report, upon which the other Magistrate made an order to the following effect, *viz* :—"The complainant's charge has been established to be false and hence no process shall be issued against the accused and the complainant shall be proceeded with under sec. 211, I. P. C.," and upon prosecution of the complainant the accused was convicted under sec. 211 of the

**Penal Code :** It was held that the offence of instituting a false complaint not having been committed before the Magistrate who ordered the prosecution of the petitioner, or brought to his notice in the course of judicial proceedings, the prosecution of the petitioner was bad and contrary to law and the proceedings must be quashed.

It was pointed out that the proper course, in such a case should have been to direct the Police to lodge a complaint.

193. In *Haibat Khan v. R.*, (1905) 1 L. R. 33 Cal. 30, the petitioner had laid a charge of mischief by fire at the thana, which was reported to be false and the District Magistrate, upon the receipt of this report made over the case to a Deputy Magistrate to hold a judicial inquiry. The latter officer after examining the petitioner and some of his witnesses reported that the information was false. Thereupon the District Magistrate under the old law sanctioned prosecution (under the present law it would now require a "complaint" in writing), and the petitioner was placed before the same Deputy Magistrate and he committed the petitioner to the Sessions Court for trial.

It was observed in this case that if the District Magistrate "had made an inquiry into the truth or falsity of the applicant's complaint, he might have had powers under sec. 476, Cr. P. C., or, seeing that the inquiry was made by the Deputy Magistrate, the Deputy Magistrate might have had power to order the prosecution of the applicant." (p. 32).

194. The duty of the Court to lodge the complaint cannot be delegated. Thus the filing of a complaint by the Public Prosecutor who was directed by the Deputy Superintendent of Police to prosecute the accused, cannot be treated as a complaint by the Court when the offence is committed in, or in relation to a proceeding in a Court. *R. v. Gurditta*, (1916) 18 Cr. L. J. 548; s. c. 39 L. C. 692. See also *In Punamchand Maneklal*, (1914) 1 L. R. 38 Bom. 642; s. c. 15 Cr. L. J. 551;

False case before police inquiry by a subordinate Magistrate—complaint by the District Magistrate.

Delegation does not give jurisdiction to make a complaint.

and *Ladha Singh v. R.*, (1915) 16 Cr. L. J. 251 : s. c. 13 P. R. 1915 Cr.

195. A High Court can make a complaint in exercising the powers of revision : *Ponnuswami Pillai v. Chokkalingam*, (1913) 14 Cr. L. J. 624 : s. c. 21 L. C. 672.

Subordination of Courts and subordination of officers.

196. The subordination of the Courts as such is distinct from the subordination of the officers presiding over the Courts.

The subordination of the Mofussil and Presidency Magistrates is laid down in secs. 17 and 21 of the Code of Criminal Procedure respectively but for the purposes of sec. 195 Cr.

P. C. The *test*, which is to be applied, has been laid down in clause (3) of sec. 195 and

it has been enacted that every Court shall be deemed for the purposes of the above section to be subordinate to the Court to which appeals from the former will ordinarily lie. Where several such Courts exist the Appellate Court of inferior jurisdiction shall be the Court to which the other Court shall be deemed to be subordinate.

197. In accordance with the above test a District Magistrate

District Magistrate, Magistrate first class and Assistant Sessions Judge subordinate to Sessions Judge.

is subordinate to the Sessions Judge : See

*Jiwan Mal v. Beli Ram*, (1916) 18 Cr. L. J.

298 s. c. 38 L. C. 330. *In re Gaddem Panchalu*

(1918) 1 L. L. R. 42 Mad. 96 ; and *Shankar*

*Dial v. Venables*, (1896) 1 L. L. R. 19 All. 121. So also a Magistrate of the first class and an Assistant Sessions Judge. (*Vide* sec. 408 Cr. P. C.).

In the case of *R. v. Ijfatulla Paikat*, (1930) 35 C. W. N. 400, it was contended that the Sessions Judge had no power to make the complaint under sec. 476 (1) because the offence

Court of Session includes Court of Additional Sessions Judge.

(if any) had been committed not before his

Court but before the Court of Additional

Sessions Judge. After referring to sec. 9,

Cr. P. C., the High Court observed, "There is only one 'Court of Session' in each session division sitting at different places,



and manned by a number of Judges. The Court is the Court of Session. It is not accurate to refer, to the 'Court of the Sessions Judge' and the 'Court of the Additional Sessions Judge' and so on except colloquially, just as in the High Court, we do not refer to the constituent Courts as the Courts of any particular Judge either 'permanent' or 'additional.' \* \* \* If authority is required for such a self-evident proposition it will be found in the following cases, *R. v. K. Kunjan Menon*, 1 M. L. J. 413 ; *R. v. Mollah Fuzla Karim*, (1905) I. L. R. 33 Cal. 193; *Bai Kasturbai v. Vanmalidas*, (1925) I. L. R. 49 Bom. 710; *Bahadur v. Eradatullah*, (1910) I. L. R. 37 Cal. 642."

198. In the case of *Kusum Sao v. Janak Lal*, (1919) 52 I. C. 219 : s. c. 20 Cr. L. J. 603 ; 4 P. L. J. 374, Whether a first class Magistrate is subordinate to an Additional Sessions Judge. the contention of the appellant in that case was that a first class Magistrate is not subordinate to an Additional Sessions Judge. Das, J., said, "It will be noticed, however, on reference to sec. 195 of the Code of Criminal Procedure that the word deliberately used by the Legislature is 'Court' and not 'Judge' and the point for my determination is not whether a Magistrate having first class powers is subordinate to the Additional Sessions Judge, but whether an appeal would ordinarily lie from a Court of a Magistrate having first class powers to a Court of an Additional Sessions Judge. Now it cannot be disputed that an appeal would ordinarily lie from a Court of such a Magistrate to the Court of Session. If an appeal would lie from the Court of such a Magistrate to the Court of Session, such appeal can, in my opinion, be disposed of only by the Court of Session. Therefore, the point for investigation narrows down to this : what is the Court of Session? In my opinion sec. 409 makes it perfectly clear that a Court of Session consists of the Sessions Judge and the Additional Sessions Judge. I hold, therefore, that the Additional Sessions Judge was competent to grant sanction in a matter arising out of a trial before a Magistrate having first class powers."

199. A second or third class Magistrate is subordinate to the District Magistrate and not to any first class Magistrate though empowered by the Local Government to hear appeals and directed by the District Magistrate to do so. As the existence of the special power which was conferred on him by the District Magistrate did not constitute such first class Magistrate the Court to which appeals ordinarily lie. See *Sadhu Lall v. Ram Churn*. (1909) I. L. R. 30 Cal. 394 ; *In re Subbamma*, (1903) I. L. R. 27 Mad. 124, and *Kompella v. Chikatla*, (1918) I. L. R. 41 Mad. 787. See also sec. 407 (2) Cr. P. C.

Where an Additional District Magistrate has been appointed under sec. 10, Cr. P. C., such Magistrate may be empowered with all the powers of the District Magistrate in which case, the Additional District Magistrate would be the authority to lodge the complaint.

A Sessions Judge and Additional Sessions Judge are subordinate to the High Court.

In the case of *Lachhman Prasad Joshi v. R.*, (1929)\* 31 Cr. L. J. 679: s. c. 124 I. C. 364, (Oudh), a Revenue Officer conducting mutation proceedings on a disputed succession under the provisions of sec. 40 of the U. P. Land Revenue Act, 1901, acts as a Revenue Court within the meaning of sec. 48 of the said Act. Where, therefore, a Revenue officer passes no order under sec. 476, Cr. P. C., either making a complaint or refusing to make a complaint but merely refuses to commit a person to the Sessions under sec. 478, Cr. P. C., the District Magistrate has no jurisdiction to revise his order and commit the person to the Sessions.

### C.—To whom the complaint is to be made.

200. Under the old section, the Court's complaint under sec. 476, Cr. P. C., was to be sent to the nearest first class Magistrate. It was held in some cases decided under the above section that the order

making over the case conferred jurisdiction to that Magistrate whether he had or had not the local jurisdiction to try the case, but it was held in *R. v. Newand*, (1908) 8 Cr. L. J. 209, that the word "nearest" was merely directory and not mandatory, and it did not confer jurisdiction and the Magistrate to whom it should be sent must be the nearest first class Magistrate having local jurisdiction to try it.

But by the amendment of the Code of Criminal Procedure in 1923 the Magistrate to whom the accused is to be sent must be a Magistrate having jurisdiction.

By the amending Act II of 1926, for the purposes of sec. 476, all Presidency Magistrates are Magistrates of the first class.

201. No officer can, however, complain to one's self; for, the very word "complaint" presupposes three persons, namely, a complainant, and a person to whom the complaint is made, and the person against whom the complaint is made. If he is a District Magistrate

Complaint to one's self.

Complaint presupposes three persons.

he should complain to the Sub-Divisional Officer, or to any other Magistrate empowered to take cognizance of the case. If he is a Sub-Divisional Officer, he should complain to the District Magistrate or to any other Magistrate specially empowered to take cognizance of the case. See section 190 Cr. P. C. As for the transfer of the case, see sec. 192 Cr. P. C., but the case should not be transferred to the complaining officer for trial; for, the same person should not be both a prosecutor and a Judge. (See sec. 487 Cr. P. C.)

202. In *R. v. Collin Mackenzie Mackay*, (1926) 1 L. L. R. 53 Cal. 350 : s. c. 93 L. C. 33 ; 27 Cr. L. J. 385, (F. B.), the Chief Presidency Magistrate, being of opinion that a witness perjured before him, drew up a complaint in writing and preferred it in his own Court and transferred the case to another Presidency Magistrate. The latter held an inquiry and committed the accused for trial before the High Court Sessions. The accused was convicted

Court complaining to itself is irregular.

by the High Court. On a certificate from the Advocate General there was a Full Bench reference.

The case came up before five Judges. The contention of the petitioner was that the Presidency Magistrate's procedure was illegal and the commitment and conviction must necessarily be bad. Of the five Judges three of them held that "although technically the Chief Presidency Magistrate made a mistake, the procedure adopted by him was substantially correct as he made a complaint and received it, and in the absence of any prejudice caused to the accused, it was nothing worse than an irregularity which could be disregarded. Walmsley, J., (who was one of the Judges who composed the majority) said, "Ordinarily a complaint implies at least three persons, a person complaining, a person against whom the complaint is made, and the third person to whom the complaint is addressed." After quoting the definition of complaint he said, "The same implication is contained in this definition, but it is a narrow view to hold that there was no complaint because the Magistrate preferred it in his own Court." Rankin, J., who was in the minority, was of opinion that "when the Chief Presidency Magistrate decided to make the complaint in this case to himself he adopted a course unknown to the law. A document which is not addressed to a person other than the writer is not a complaint either in the ordinary sense or in the sense in which the word is used in sec. 476 Cr. P. C. The fact that the word 'complaint' appears in the heading or in any other part of the document does not make it a complaint or bring it any nearer to being a complaint. It is not an allegation made to a Magistrate [Sec 4 (1) (f)]. Such a document is not merely irregular or defective as a complaint: it is one of which the general character and governing intention are not those of a complaint. The meaning of sec. 476 is that a Judicial Officer minded to initiate proceedings for offences therein described must initiate them before another person who is a Magistrate of the first class having jurisdiction and must do so by making and forwarding a complaint to him."

It has been held in the case of *Kantir Misst v. R.*, (1929) 30 Cr. L. J. 710 ; s. c. 11 P. L. T. 88, that when a complaint is made by a public servant for any offence punishable under sec. 182 I. P. C., the Magistrate is governed 'only by the rules in Chapter XVI of the Code of Criminal Procedure. As in a complaint made by a private person he should normally issue summons but in exceptional cases, 'for reason to be recorded in writing' he may under sec. 202, Criminal Procedure Code, postpone issue of process and make an inquiry or direct a Magisterial Police inquiry or investigation. The position would be the same if a Police Officer complained, for instance, under sec. 211 of the Penal Code, and apart possibly from a complaint made by a Court under sec. 476 (1) Cr. P. C.

It was further held in the above case that no complaint is in any sense invalid merely because the person accused has not had an opportunity of showing cause against the complaint being made.

203. When a case comes before a Magistrate on a complaint of a public servant or of a Court under sec. 182 or 211, I. P. C., he should not question the propriety of the complaint. He is not sitting as a Court of appeal under sec. 476-B or as a Court of revision to examine the mode in which the complaining Court or a public servant had dealt with the case in which the complaint was made. He should leave the accused to raise the question before a competent public servant under sec. 195, sub-sec. (5), or sec. 476-B, as the case may be. See *R. v. Irad Ally*, (1879) 1 L. R. 4 Cal. 869.

In *R. v. Husein*, (1889) Unrep. Cr. Cases, Bom., 473, a District Magistrate, being of opinion that the Sessions Judge gave sanction to prosecute on a mistaken view of evidence, referred the case to the High Court, the High Court declined

Questions of fact must be dealt with by the Court tried the case.

to interfere on the ground that the questions of fact must be dealt with by the Court which might try the case. The same principle is applicable now when a complaint is made. It is the duty

of the Court to whom it is sent to take cognizance of the case. See *R. v. Arjan Pramanik*, (1904) I. L. R. 31 Cal. 664. The Court to which a complaint is made cannot return the case to the complaining Court. *R. v. Jan Mahomed*, (1869) 12 W. R. Cr. 41.

It is the duty of the Magistrate to proceed according to law and as if upon complaint made under sec. 200, Cr. P. C. The expression "proceed according to law" requires the Magistrate receiving the reference to proceed under Chapter XVIII to XXI of the Code according to the nature of the offence supposed to have been committed. *Devidin v. Narayanrao*, (1920) 21 Cr. L. J. 310 ; s. c. 55 I. C. 470. *Giridhari Lal v. R.*, (1916) 21 C. W. N. 950.

## CHAPTER VIII

**Complaint.—What it is, and what it is not.—Absence of complaint.**

204. Before the amending Act of 1923, no Court could take cognizance of an offence under sec. 182 L. P. C., except with the previous sanction or on the complaint of the public servant concerned, or of some public servant to whom he was subordinate, and when an offence was committed under sec. 211, L. P. C., and such offence was committed in, or in relation to any proceeding in any Court except with the previous sanction, or on the complaint of such Court, or of some other Court to which such Court was subordinate.

The old law was changed with a view to adopt the principle that the public servant or the Court should file a complaint exactly in the same way as a private individual.

After the amendment of Code of Criminal Procedure in 1923, no sanction is required to initiate a proceeding under sec. 182 or under 211 L. P. C., when committed in, or in relation to a proceeding in a Court.

205. The amendment thus, "got rid of the objectionable practice of keeping a sanction, which had been granted to a private individual hanging over the head of the accused person for a period of six months which was frequently utilized for the various purposes of blackmail." (See the report of the Select Committee).

It was also one of the reasons for this change that private individuals should not be allowed to prosecute for offences connected with the administration of justice.

206. A "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Criminal Procedure Code,\* that some person, whether known or unknown, has committed an offence, but it does not include the report of a Police Officer. See sec. 4 (h) Cr. P. C.

According to this definition, a complaint may be oral as well as in writing. But it will be seen that, according to sec. 195 Cr. P. C., *the complaint must be in writing.*

The words "in writing" were introduced in sec. 195, Cr. P. C., by the amending Act of 1923. By the same Act a new clause (aa) was added to sec. 200, Cr. P. C., which enacted that "when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties."

207. The definition of "complaint" is a wide one; see *Jogendra Nath Mookerjee v. R.*, (1905) I. L. R. 33 Cal. 1.

Where a Munsif being of opinion that in a case certain persons had committed offences under sec. 193 and other sections of the Indian Penal Code, and that the prosecution was desirable, made an order which he described as passed under sec. 643 of Act XIV of 1882, in which he directed that the accused should be sent to a Magistrate and the Magistrate should inquire into the matter, it was held by the Full Bench in *Isfiri Prasad v. Sham Lal*, (1885) I. L. R. 7 All. 871, that the Munsif's order was a sufficient "complaint."

208. In *Ahamadar Rahman's* case, (1927) 32 C. W. N. 164, the District Judge in disposing of an appeal against an order of the Munsif refusing to make a complaint gave his reasons for holding that there



was a good *prima facie* case and directed the prosecution of the party proceeded against and ordered a copy of his order to be sent along with the records to the proper Magistrate as a complaint : it was held that in some cases a more formal and fuller document might be required, but in the circumstances of the case in question it was a good "complaint."

209. In the case of *Russick Lal Mullick*, (1880) 7 C. L. R. 382, the petitioner brought a charge of theft

A petition to be allowed to substantiate his previous complaint is a complaint.

against certain persons, which the Police reported to be false. On receipt of the report on the 6th August, 1880, the petitioner was summoned by the Assistant Commissioner to answer the charge and on the 10th August the petitioner petitioned to the Assistant Commissioner to be allowed to substantiate his own complaint; it was held that this application of the 10th August ought to have been treated as a complaint and the procedure on the receipt of complaint ought to have been followed, (see p. 384).

Similarly, in *Lalji Gope v. Giridhari Chaudhury*, (1900) 5 C. W. N. 106, it was held that the presentation of a petition by the complainant that his complaint should be inquired into, is in effect a complaint within the meaning of sec. 4 (h) Cr. P. C., and the Magistrate is bound to hold a full judicial inquiry into the matter before proceeding further.

210. In *Lala Hub Lal v. R.*, (1926) 27 Cr. L. J. 523 : s. c. 95 I. C. 987 (All.), the application was made in revision of an order of the Collector directing the prosecution of the applicant Lala Hub Lal for offences under secs. 193, 209 and 210, I. P. C. One of the grounds urged before the High Court was that the Collector professed to give sanction

Error in "Com-plaint." to the prosecution of the applicant, whereas under the Criminal Procedure Code, as now amended, he should have made a complaint against the applicant under the provisions of sec. 476. Daniels, J., observed, "The Collector seems to have realised that he was acting under sec. 476, for immediately after the words

'sanction the prosecution' he adds a direction sending the case to the Sub-Divisional Magistrate for trial. As a Court of revision the High Court has power to correct the erroneous form of the Collector's order, and in the exercise of that power I alter the words 'sanction the prosecution of Hub Lal', in the Magistrate's order to the words 'make a complaint against Hub Lal.' Compare this case with *Ram Prasad v. R.*, (1927) 1 L. R. 49 All. 752 : s. c. 102 L. C. 351 ; 28 Cr. L. J. 543, see *post* ¶ 221.

211. As a "complaint" must be an allegation to the Magistrate with a view to his taking action under the Code, a mere report to the Police or to the Civil Court cannot be a "complaint."

In the case of *Darkan v. R.*, (1928) 110 L. C. 101 : s. c. 29 Cr. L. J. 645 (Lah), the process-server reported to the Subordinate Judge that he was obstructed in serving the process and a report was sent by the Subordinate Judge to the Superintendent of Police to inquire into the matter and to take proper action. As a result of a Police inquiry the accused were sent up for trial under secs. 332 and 394 I. P. C.

The case coming up before the High Court it was held that there was no "complaint" in this case as defined in the sec. 4(h) Cr. P. C., by either the process-server or the Subordinate Judge, on the ground that "the former presented a report of the occurrence on the back of the warrant to the Civil Court, and did not *make any allegation either orally or in writing to a Magistrate* and the senior Subordinate Judge merely reported the matter to the Police. Neither this, nor the Police *chalan* did, of course, constitute a "complaint". The result thus is that the Court took cognizance of the case without jurisdiction."

212. A report to a Police Officer by a public servant Report to a concerned is not a complaint. *Kailas v. R.* Police Officer is not a complaint. (1902) 1 L. R. 30 Cal. 285. For according to the definition of "complaint" it should be made to the

Magistrate. In this case the petitioners were convicted under secs. 143 and 186 I. P. C.; but the High Court set aside the conviction and sentence under sec. 186 I. P. C., although maintained the conviction under sec. 143 I. P. C.

213. In *Umrao Singh v. R.*, (1909) 6 A. L. J. 236 : s. c. 9 Cr. L. J. 518, Musammāt Saidu reported at the *thana* that one Raghu Kurmi had stolen a bullock. At the time of the report Umrao was with Saidu. The Sub-Inspector submitted a report to the Assistant Superintendent of Police asking that action be taken against Umrao Singh under sec. 182 I. P. C. The Assistant Superintendent of Police forwarded the report to the Sub-Divisional Magistrate remarking that action need be taken. The Magistrate treated the report as a "complaint" and proceeding under sec. 195(1) Cr. P. C., took cognizance of the alleged offence under sec. 109 read with sec. 182. The High Court held that "the Sub-Divisional Magistrate was not justified in treating the report of the Sub-Inspector submitted to the Assistant Superintendent of Police as a complaint and taking cognizance of the alleged offence against Umrao Singh."

In the case of *Chhedi Kandu v. 2.*, (1910) 7 A. L. J. 618 : s. c. 11 Cr. L. J. 351 (All), Chhedi sent a telegram to the Collector to the effect that during his absence on duty the Naib Tahsildar with a *chaprasi* and the Plague Doctor forcibly broke his house and beat his family and inoculated plague *thika*. The Collector made over the telegram to the nearest Magistrate who tried the case. The sender of the telegram was not examined on oath. The Magistrate ordered an inquiry by a Tahsildar who after an inquiry reported the case to be false. The Magistrate then sent for Chhedi and recorded his statement and examined his witnesses. It was held that Chhedi Kandu could not be said to have made any complaint to the Magistrate. Under the circumstances no offence under sec. 211, I. P. C., was committed by him and the Magistrate was not justified in taking actions under sec. 476, Cr. P. C.

214. In *Ahmed Husain v. R.*, (1913) 17 C. W. N. 980, the petitioner was summoned under sec. 186 I. P. C., for obstructing a peon in the execution of a warrant, under the Cess Act. The report of the peon on which the proceedings were started was merely a report of what took place and contained no express or implied request to the Magistrate to take any action. It was held that the report did not come within the meaning of a "complaint" under sec. 4 (h) of the Code of Criminal Procedure. The prosecution was held bad.

Similarly, in *Pabitra Nath Das v. R.*, (1927) 31 C. W. N. 139 (note), a peon submitted a report to the Sub-Divisional Magistrate that he went to the house of the petitioner to serve a witness-summons in a case under sec. 133, Cr. P. C., and that the petitioner, on being told that a summons was to be served on him, got irritated, asked the peon to get out and abused him and forbade others to put their signatures on the return of service as witnesses. The peon submitted a report to the Sub-Divisional Magistrate who directed him to file a complaint before the Senior Extra-Assistant Commissioner. The peon accordingly submitted a report, the concluding words of which were "submitted for information." Thereafter the Extra-Assistant Commissioner examined the peon on oath and issued summons under sec. 186 I. P. C. The High Court held that the report of the peon on which proceedings were started was merely a report of what took place and it did not come within the meaning of complaint under sec. 4 (h) of the Code of Criminal Procedure.

215. In *R. v. Sheo Sampat*, (1918) 1 L. R. 40 All. 641, the holder of a decree for rent passed by an Assistant Collector of the second class, took out execution for a larger sum than was in fact due and also gave in his application a wrong date as the date of decree. The judgment-debtor paid the amount claimed under compulsion and thereafter applied for sanction to

"Report" without request for action.

Report containing the words "submitted for information not a 'complaint'."

Soliciting directions from a superior as to how a Magistrate shall proceed—not a "complaint."

prosecute the decree-holder. Upon receipt of this application the Assistant Collector wrote a letter to the District Magistrate forwarding it through his immediate superior the Sub-Divisional Magistrate, in which he stated all the facts of the case and concluded by soliciting orders in the case. The Sub-Divisional Magistrate, instead of forwarding this letter to the District Magistrate, himself passed orders for the prosecution of the decree-holder ; and tried the case himself and convicted the decree-holder of offences under secs. 193 and 210 of the Indian Penal Code. On appeal the conviction and sentence were upheld by the Sessions Judge. The case coming up before the High Court on revision, it was held that the letter written by the Assistant Collector to the District Magistrate, in which the former did not ask that any action should be taken by the Magistrate, but merely for directions as to *how he should proceed*, did not amount to a "complaint" within the meaning of the sec. 4 (h) of the Criminal Procedure Code, and, there being no "complaint", the trial was illegal.

216. In the case of *Sukumar Chatterjee v. Mofizuddin Ahmed*, (1921) 25 C. W. N. 357, it was held that the definition of "complaint" does not require any statement of facts beyond an allegation that some person has committed an offence, but if that definition is read into 190 (1) (a) of the Criminal Procedure Code, it is clear that before a Magistrate takes cognizance

he must have before him an *allegation of facts constituting the offence* ; a mere repetition of the words of a section of the Penal Code is not a proper compliance with the provisions of the sub-section.

217. A report submitted by the Superintendent of Police to a Sub-Divisional Officer with the endorsement that it is *submitted for favour of perusal and necessary action does not amount to a complaint* within the meaning of sec. 4 (h) of the Code of Criminal Procedure. *Baldeo Singh v. R.*, (1926) 96 I. C. 211 : s. c. 27 Cr. L. J. 899, (All).

218. In *Shaikh Muhammad Yassin v. R.*, (1924) L. L. R. 4 Pat. 323, 326, 327, it was held that having regard to the definition of "complaint" in the Criminal Procedure Code the order of the Magistrate summoning a person is not itself a complaint either within sec. 195 (1) (b) or within sec. 476 Cr. P. C. The High Court observed, "These proceedings were initiated by the Sub-Inspector of Police who made the complaint and on that complaint the Magistrate passed an order to summon the appellant. It is, in my opinion, impossible to construe that order has passed on a complaint as being itself a complaint within the meaning of the Code."

An order summoning the accused is not complaint of the Magistrate.

### Absence of a Complaint.

219. In *R. v. Sri Narain*, (1924) L. L. R. 47 All. 114 ; Sec. 238 Cr. P.C. s. c. 26 Cr. L. J. 446, it has been held that the provisions of sec. 195 Cr. P. C., cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character.

Applying the principle of the above ruling, it will be wrong to convict a man under sec. 182 I. P. C., where there is a complaint by the Police Officer but not one by a Court, if the offence is committed in, or in relation to any proceeding in Court. Section 238 Cr. P. C., is not applicable in such a case for the Court *has no jurisdiction* to try the case without the complaint of the Court.

220. In the case of *Muthu Goundan v. R.*, (1924) 26 Cr. L. J. 962 : s. c. 87 I. C. 418 (Mad), it was pointed out that unless and until the public servant concerned chooses to move in the matter, the Court has no authority to do so *suo motu* whatever process it reaches that result. A Court taking cognizance of an offence under sec. 211 of the Penal Code, does not *ipso facto* take cognizance of one

under sec. 182 of the Code. Where, therefore, a charge against an accused person is altered from one under sec. 211, Penal Code, into one under sec. 182, a conviction under the latter section is bad in the absence of a "complaint" by the public servant concerned.

221. In case of *Ram Prasad v. R.*, (1927) 102 I. C. 351 : s. c. I. L. R. 49 All. 752 ; 28 Cr. L. J. 543, <sup>Irregularity in or absence of contents of complaint.</sup> (All), an order for the institution of a case was treated as a "complaint." The High Court observed that "under the present law a Court must make a 'complaint' and cannot directly order prosecution. The 'complaint' must set forth the offence, the precise facts on which it is based and the evidence available for proving it." See *ante* ¶ 210.

222. In this connection, it is necessary to consider the effect of an absence of the requisite complaint in a case. Previous to the amending Act of 1923, sec. 537 Cr. P. C., provided :—

"Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

(a) of any error, omission or irregularity in the complaint,  
\* \* \* or,

(b) of the want of or any irregularity in, any sanction required by sec. 195, or any irregularity in proceedings taken under sec. 476, or,

(c) \* \* \* \*

(d) \* \* \* \* unless such error, omission, irregularity, want of misdirection has in fact, occasioned a failure of justice.

*Explanation* :—in the determining whether any error, omission, or irregularity in any proceeding under the Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

Clause (b) of sec. 537, Cr. P. C., has now been omitted.

Clause (a), so far as complaints are concerned, now stands the same as before. According to it any *error, omission or irregularity* in any complaint is excused if there had been no failure of justice occasioned by such error, omission or irregularity. But the question is if the *absence of a complaint* is cured by sec. 537 Cr. P. C.

223. In *Ameraj Singh v. R.*, (1924) 86 L. C. 287 : s. c. 26 Cr. L. J. 751, (All), it was held that under the amended Criminal Procedure Code want of a regular complaint by a public servant or a Court in respect of an offence referred to under sec. 195 of the Code is fatal to a prosecution.

The absence of a complaint in writing as required by the provisions of sec. 476, Cr. P. C., is an illegality which vitiates the trial. This view was taken by the Nagpur Judicial Commissioner's Court in the case of *Tularam Marwadi v. R.* (1926) 100 L. C. 1044 : s. c. 28 Cr. L. J. 388, where the Court observed that "it is an illegality which vitiates the trial of the case by the Magistrate is clear from sec. 530 (p) of the Criminal Procedure Code." See also the case of *Janki Prasad v. R.* (1926) A. L. R. 1926 All. 700 : s. c. 27 Cr. L. J. 904.

224. In *Fakir Mahomed v. R.*, (1926) 27 Cr. L. J. 1105, 1110 : 97 L. C. 417 (Sind), the Judicial Commissioner pointed out that before the error, omission or irregularity in a complaint can be cured, the complaint must exist. Where there is no complaint, sec. 537 (a) does not apply. See also the case of *Mofim Chandra Nath v. R.*, (1928) 33 C. W. N. 285 : s. c. 49 C. L. J. 342.

225. Where there had been a regular complaint in writing and the cognizance of the case is taken it would be no bar to the prosecution if the complaint in writing is missing from the report.

In the case of *Lachmi Singh v. R.*, (1924) 25 Cr. L. J. 972 : s. c. 81 L. C. 620, (Pat), the complaint in writing of the



Writer Head Constable was not found in the record. It was held that a conviction under sec. 182 is not bad in law simply because no complaint in writing under sec. 195 Cr. P. C., is found in the record and it was further observed that the absence of a complaint in writing would only amount to an error, omission, or irregularity as contemplated by sec. 537 Cr. P. C.

226. As regards the last observation that sec. 537 Cr. P. C., cures the omission, it is respectfully submitted that the observation is an *obiter* and is not correct. An *absence of a complaint is not an error, omission or irregularity in the complaint*. The error, omission or irregularity in a complaint presupposes the existence of a legal complaint, in regard to which such error, omission or irregularity, if any, is excused by sec. 537, Cr. P. C.

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## CHAPTER IX.

**Inquiries before making a complaint.—Commitment instead of a complaint.**

**A.—Inquiries regarding an offence under sec. 182 I. P. C.**

227. There is no provision of law for inquiries regarding an offence under sec. 182 I. P. C., *committed before a Police Officer*. When the public servant is a Police Officer he is in a position to know by his investigation which generally follows the information whether such information is true or false to the knowledge of the informant. When the public servant is other than a Police Officer he should have materials before him that the information is false to the knowledge of the informant. When a false case is made under sec. 182, before a Magistrate he may either inquire into the case himself or send the case for inquiry and report by a competent person under sec. 202, Cr. P. C., and may act upon such report. In all cases of complaint by a public servant there should be sufficient materials to start with.

**B.—Inquiries regarding offences under sec. 182 I. P. C., committed in, or in relation to proceedings in Court.**

228. In a previous Chapter we have already discussed when an offence under sec. 211 can be said to be committed in relation to proceedings in Court and have seen that such an offence includes not only that instituted in Court but also that which is instituted before the Police, but in regard to which either previous to or simultaneously with or subsequent to their institution a complaint for the offence is lodged in Court whether by way of regular complaint or by a *narajit* petition.

229. In regard to such an offence a judicial inquiry is permitted by the Code of Criminal Procedure.

Section 476 Cr. P. C., provides :

“When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of <sup>Procedure in cases mentioned in sec. 195.</sup> justice that an inquiry should be made into any offence referred to in sec. 195, sub-sec. (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate.”

“Provided that where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.”

“For the purposes of the sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.\*

(2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under sec. 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

\* The word “Chief” in third paragraph of sec. 476 Cr. P. C., has been omitted ; and a proviso to the first paragraph has been added to the section by the Code of Criminal Procedure, (Amendment) Act, 1906, (Act II of 1906).

230. The above section refers to sub-section (1) clauses (b) and (c) of sec. 195 Cr. P. C., and has no application to clause (a) of sec. 195 Cr. P. C., which among others refers to sec. 182 I. P. C. Accordingly a public servant complaining of an offence under sec. 182 I. P. C., cannot proceed under this section.

Section 476 refers to sub-section (1) clauses (b) and (c) of sec. 195 Cr. P. C., *i.e.*, among other offences, to those under sec. 211 which are committed in, or in relation to proceeding before a Court. There need not thus be any proceeding under sec. 476 when the offence under sec. 211 I. P. C., is not committed in, or in relation to any proceeding in Court.

231. The word "proceeding" is not defined in the Code. The meaning of the word as given in the Webster's Dictionary is as follows:—"The course of procedure in the prosecution of an action at law." A "proceeding" may be either judicial or non-judicial. Section 4, clause (m) Cr. P. C., says, "A judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath." The word "proceeding" in sec. 195 Cr. P. C., embraces both judicial and non-judicial proceedings. By the amendment of the section 476 in 1923, the word "judicial" has been omitted. So the inquiry under that section can be made when the offence is committed in a proceeding whether judicial or non-judicial.

A "criminal proceeding" is a far larger term than "criminal prosecution." (*Yates v. R.*, 54 L. J. Q. B. 258; 14 Q. B. D. 648).

232. It has been held in *Ram Charan v. R.* (1925) 26 Cr. L. J. 1126; s. c. 88 L. C. 358, that the words "offence which appears to have been committed" in sec. 476 Cr. P. C., mean that the facts before the Court unless rebutted show that no offence has been committed.

**233.** Before the amendment of the Code of Criminal Procedure in 1923 different High Courts had differently held whether sec. 476 Cr. P. C., was a self-contained provision laying down an independent or an alternate procedure for a Court to adopt when it decided to take action, or whether it was supplementary to sec. 195 Cr. P. C. The present section (sec. 476) lays down the procedure to be followed for making complaints under sec. 195 (1) (b) of the Code of Criminal Procedure.

**234.** In the report of the Joint Committee before the Council of State in September 1922, the Hon'ble Mr. Moncrief Smith said, "One of the most weighty changes introduced by this measure is in respect of prosecution for offences committed before or in relation to proceedings of the Court. A glance at any commentary on the Code will give some indication of the difficulties that have arisen in putting sections 195 and 476 into operation. After a long and careful thought, Government have decided on a line of action which, I may say, has met with general approval. The two sections as they stand (now) provide and an alteration for the procedure for the Courts in dealing with them. Sanction is given to proceedings under sec. 195 or action is directed by the Courts under sec. 476. The sanction proceedings are now omitted and the two sections will in future supplement each other. *Section 195 will contain the prohibition of except upon complaint by the Court : section 476 will lay down the procedure to be followed.*"

**235.** It will be seen that under sec. 195, it is open to the Court before which the offence is committed to prefer a complaint for the prosecution of the offender: and on the other hand sec. 476, prescribes the procedure as to how the complaint may be preferred.

Under the present law the responsibility of lodging the complaint rests with the Court. In each case, therefore, it is to be borne in mind that whether in the interests of justice,

a preliminary inquiry is necessary or not before a complaint is filed.

An inquiry under sec. 476 of the Code of Criminal Procedure is accordingly discretionary but not obligatory.

**236.** The holding of a preliminary inquiry in a proceeding under sec. 476, Cr. P. C., being discretionary **Preliminary inquiry is discretionary.** a person against whom an order for prosecution has been passed without such an inquiry cannot complain unless he has been prejudiced by the omission.

Where evidence has already been recorded, as for instance, in the course of trying the original complaint a fresh inquiry may not be necessary. *But if an offence has been committed not in Court but outside the Court*, as in the case of obstruction to execution, an investigation may be necessary to enable the Court to ascertain facts justifying an order under sec. 476 Cr. P. C. (*Durpa Narayan v. Bepin Behary*, (1911) 15 C. W. N. 691).

**237.** In *Tarakdas Moitra v. R.*, (1916) 21 C. W. N. 125, Sanderson, C. J., said, "I can quite imagine that in certain cases no preliminary inquiry is necessary: It may be that in a case where the Judge is trying the case and all the facts which are material to the charge have been brought to the notice of the learned Judge, or have come out during the course of hearing of the case, it would be mere waste of time and quite unnecessary to hold a preliminary inquiry, because the learned Judge is in possession of material facts on which it is necessary for him to form the judgment.

**But where incident takes place outside the Court—preliminary inquiry is necessary.** But in such a case as this, where the incident took place outside the Court, and as to which the learned Judge himself could have no knowledge and as to which evidence must be called for, in my judgment, unless he does hold such a preliminary inquiry *as may be necessary to enable him to determine whether or not there is any case fit to be sent to the Magistrate, he has no jurisdiction to send the accused under sec. 476 Cr. P. C.*"

In the case of *Sarat Chandra v. Hari Charan*, (1929) 51 C. L. J. 45, it was held that "though a preliminary inquiry may not be legally necessary, it should in common prudence be held by every Court, before it passes an order under sec. 476 Cr. P. C."

But this view was dissented from in the case of *Purna Chandra v. Shiek Dhalu*, (1930) 34 C. W. N. 914 : s. c. 52 C. L. J. 87, and therein the case-law of the Calcutta High Court on the subject was reviewed. In this case the High Court held that "the Court has to decide in each individual case whether in the interests of justice a preliminary investigation is necessary. *In a case where an offence has been committed outside the Court and not in presence of the Judge, it would be judicious, if not incumbent, upon the Court to hold a preliminary inquiry in order to find out for itself whether such offence was really committed. But where an offence is committed in presence of the Court or from a perusal of the record it is of opinion that it is necessary in the interests of justice that a further inquiry into the matter should be made in the Criminal Court, it may make a complaint to that effect to the nearest Magistrate without making any preliminary inquiry. It cannot be laid down as a proposition of law that in every case it is prudent to hold a preliminary inquiry before making a complaint under sec. 476, Cr. P. C.* There may be a case where the revising authority may think that an action under sec. 476 Cr. P. C., was too hastily taken and that there should be further investigation in the matter." *The word in sec. 476 being "Court," the authority competent to make a complaint includes the successor is not required to hold an independent preliminary inquiry any more than his predecessor.*

The case-law on this point previous to the amendment of the Code is almost the same after the amendment. In the above case, Costello, J., in comparing the old and the amended section 476, rightly pointed out, "It is to be

observed in the first place that there are a number of decisions \* \* \* \* which unquestionably make it clear that even under the old corresponding section of the Criminal Procedure Code "a preliminary inquiry was in no sense obligatory. The previous words of the section were 'such Court after making any preliminary inquiry that may be necessary'. So even under that phraseology it was not a necessary condition precedent to the making of an order under sec. 476, that there should be any preliminary inquiry at all. The section did not say so and therefore to hold that there was any rigid rule of law on the point, is to my mind to go beyond the words of the section. The section says, 'that may be necessary', thus assuming that there were cases in which an inquiry might be necessary and cases in which an inquiry might not be necessary. It follows therefore that an order made under the terms of the old section was not necessarily bad, because no inquiry at all had in fact been made before the Court concerned made an order."

238. A successor of the officer before whom the original trial took place is not bound to hold an independent investigation before making an order under sec. 476 Cr. P. C. See the cases of *Durpa Narayan v. Bepin Behary*, (1911) 15 C. W. N. 691 : and *Purna Chandra v. Sheikh Dhalu*, (1930) 34 C. W. N. 914 : s. c. 52 C. L. J. 87.

239. The words "preliminary inquiry, if any, as it thinks necessary," seem to mean an inquiry as the Court thinks necessary to determine whether or not there is any case fit to be sent to the Magistrate ; *i.e.*, to determine whether there is a *prima facie* case, and there is a reasonable prospect of a successful termination of the prosecution and that the prosecution is necessary in the interests of justice.

240. There is no such preliminary inquiry where the Magistrate dismisses the original complaint upon a report



from the Police, as there is no legal evidence before him upon which he is in a position to frame his opinion. It is irregular to substitute the opinion of the Police Officer who made the report for that of the Magistrate, and the notice must be issued to the party concerned to show cause why his prosecution should not be started on a complaint, and the Magistrate should hear evidence, if necessary, in support of the cause shown. "Cases in which the Magistrate examines the complainant and hears the evidence and acquits or discharges the accused, and then, without notice to the complainant, the Magistrate complains for preferring a false charge, the complaint cannot be said to be improper." *R. v. Sheik Beari*, (1886) 1 L. R. 10 Mad. 232. (F.B.). See the ratio of the cases discussed in this case.

241. The object of such an inquiry has been discussed in *re Raja Rao*, (1926) 27 Cr. L. J. 1149 : What a Court has to decide under sec. 476 Cr. P. C. s. c. 97 L. C. 669 (Mad.), where it was held that what a Court has to decide under sec. 476 Cr. P. C., is *first*, whether an offence of the kind contemplated appears to have been committed, and *secondly*, whether it is expedient in the interests of justice that it should be further inquired into in order to arrive at a decision, the Court may, if it thinks fit, hold such preliminary inquiry as it considers necessary, *the nature, method and extent thereof being entirely at its discretion*. The inquiry need not be such as to satisfy the Court *that an offence has actually been committed, but merely that an offence appears to have been committed*. Nothing more is necessary and a long discussion of a decision on the merits is as undesirable as it is unnecessary.

242. The law does not require a minute and detailed inquiry but only such preliminary inquiry as may be necessary to make out a *prima facie* case. The extent of the preliminary inquiry is left to the discretion of the Court; *Chamari*

Sec. 476 Cr. P. C., does not contemplate a detailed inquiry.

v. *Public Prosecutor*, (1925) I. L. R. 4 Pat. 484. See *post* ¶ 256.

243. The question, if a notice must be issued to the accused, is similar to the one raised in proceedings under sec. 437 Cr. P. C., *viz.*, whether an accused person shall have a notice of a proceeding for further inquiry. On the abstract question as to whether it should or should not be given, there has been divergence of judicial opinion.

Notice — whether to be issued in an inquiry under sec. 476 Cr. P. C.

Divergence of judicial opinion.

244. According to the Patna High Court, if a preliminary inquiry is started, it must be a real inquiry, and the accused must be given an opportunity to show cause and to cross-examine the witnesses if he so desires. *Ganeswar Pahari v. R.*, (1921) 61 I. C. 842: s. c. 22 Cr. L. J. 458.

The Patna High Court.

245. Following an earlier decision in *R. v. Matabzai*, (1893) I. L. R. 15 All. 392, the Allahabad High Court held in *Abdul Ghafur v. Raza Husain*, (1912) I. L. R. 34 All. 267, that when a Magistrate takes an action under sec. 476, it is not necessary for the validity of his orders that he should hold a preliminary inquiry, nor, if he does hold preliminary inquiry, is it necessary that he should give the person against whom such inquiry is being held an opportunity of cross-examining the witnesses.

The Allahabad High Court.

246. In the Calcutta High Court in *Chota Sadoo Peadafi v. Bhobun Chuckerbutty*, (1868) 9 W. R. Cr. 3, it was laid down that the preliminary inquiry need not be held in the presence of the accused.

The Calcutta High Court.

247. In the Madras High Court it has been held that the proceeding under sec. 476 is a judicial proceeding; for evidence may be taken under that section; and a party to whose prejudice it is done must be preliminarily heard and a judgment formed upon legal evidence. (See the observation in *R. v. Shaelik Beal*,

The Madras High Court.

(1887) L. L. R. 10 Mad. 232, 236, (F. B). The case of *Abdul Ghafur* (see ante ¶ 245) was followed by the Madras High Court *In re Raja Rao*, (1926) 97 L. C. 669 : s. c. 27 Cr. L. J. 1149, dissenting from *Ganeswar Pafiaraj v. R.*, (1921) 61 L. C. 842 : s. c. 22 Cr. L. J. 458, and *In re Perumalla Venkatasubbiah*, (1922) 69 L. C. 440 : s. c. 23 Cr. L. J. 712 ; 44 M. L. J. 74.

248. In *Amar Nath v. R.* (1926) 99 L. C. 1027 : s. c. 28 Cr. L. J. 227 (Lah), Jai Lal, J., held that where The Lahore High Court. a Court proposes to order a prosecution under sec. 476, Cr. P. C., on the evidence of witnesses whom the accused had no opportunity to cross-examine and whose evidence has not been tested it should not pass an order without giving notice to the accused person and giving him an opportunity to meet the case made against him. See also the case of *Jagat Singh v. R.*, (1929) 120 L. C. 687 : s. c. 31 Cr. L. J. 179, (L).

249. When a notice is issued to the accused to show cause, he should be given an opportunity to adduce evidence to show that he is innocent and that as a matter of sound discretion no complaint should be made by the Court before the accused is heard. When a notice is issued to the accused an opportunity for adducing evidence should also be given.

250. The ordinary rule should be that in the exercise of a sound judicial discretion, a notice should be given ; but in special cases it may be dispensed with. Where without sufficient reasons notice is not given, the superior Court may set aside the proceedings if there has been any prejudice. Discretion to be exercised according to the facts of each case.

251. In *Durpa Narayun v. Bepin Behary*, (1911) 15 C. W. N. 691, it was held that "in strict law, for proceedings under the section (476 Cr. P. C.), neither a notice to show cause why a party should not be sent for trial, nor a preliminary inquiry is indispensable. What has to be borne in mind in each individual case is, whether in the interest of justice a Prel-

*minary investigation is necessary.* It may be added that whether the person against whom an order under sec. 476 has been made without preliminary investigation has been prejudiced by reason of the omission to make such investigation is a matter which may be considered by this court (the High Court) when the propriety of the order is called in question." See *Chowdhuri Mahomed Izharul Huq v. R.*, (1892) 1 L. R. 20 Cal. 349.

252. But in *Brindaban v. R.*, (1919) 20 Cr. L. J. 791 : s. c. 53 L. C. 695, (Oudh), following the cases of *Thakur Dass v. R.*, (1913) 15 Cr. L. J. 217 : s. c. 22 L. C. 1001, (Oudh), and *Ram Prati Rai v. R.*, (1912) 13 Cr. L. J. 707 : s. c. 16 L. C. 515, (All), it was observed that "the Court looks with disfavour upon any order which is passed without such notice particularly in a case where there is no evidence one way or the other or on the record to show a dishonest motive."

253. A Court holding a preliminary inquiry under sec. 476 Cr. P. C., may legally take evidence on oath therein, and the inquiry is, therefore, a "judicial proceeding" within the terms of sec. 4 (m) of the Code ; *Abdullahi Khan v. R.*, (1909) 1 L. R. 37 Cal. 52 : s. c. 14 C. W. N. 132 ; 11 Cr. L. J. 45.

Although the Code of Criminal Procedure does not contain any provision with regard to the manner in which the evidence in an inquiry under sec. 476, should be recorded ; but for future reference the Magistrate should make a summary of the statements of the witnesses examined. *R. v. Jogendra Nath Ghose*, (1914) 1 L. R. 42 Cal. 240 : s. c. 18 C. W. N. 1242.

254. In such proceedings the persons against whom the proceedings are directed, are *in the position of accused persons*. So to examine him as a witness in the course of the proceedings is illegal and *ultra vires*. In such proceedings the person can only be examined in accordance

Omission to hold preliminary inquiry, if prejudicial, liable to be set aside.

Court looks with disfavour when an order passed without notice.

The Allahabad High Court.

In a preliminary inquiry a Court may take evidence on oath.

To examine a person against whom proceedings are directed is illegal and *ultra vires*.

with the provision of sec. 342 Cr. P. C. He cannot be properly asked questions merely to elicit a statement as a foundation for ordering his prosecution : *Maung Po Nyun v. Mutu Kurpen Chetty*, (1916) 17 Cr. L. J. 316 : s. c. 35. I. C. 492.

255. When a complaint is made under sec. 476, it is well to give reasons for it. But want of reason is no ground for selling it aside. Section 476 of the Criminal Procedure Code merely states that the Judge should record a finding. It does not state that that finding should be supported by reasons or that it should contain issues for decision. *Lakshmichand Gandamal v. R.*, (1926) 98 I. C. 97 : s. c. 27 Cr. L. J. 1249 (Sind).

256. The preliminary inquiry must be conducted by the officer who directs the prosecution and cannot be delegated to any other officer. See *Sakhi Rai v. R.*, (1918) 20 Cr. L. J. 245 (Pat).

It was held in *Chamari Singh v. R.*, (1924) I. L. R. 4 Pat. 24 : s. c. 26 Cr. L. J. 170 : 83 I. C. 730, that "section

The Patna High Court. 476 contemplates that after making such inquiry as may be necessary, the Court

should make a complaint in writing. It is for the Court acting under sec. 476 to make any inquiry that is necessary and then to make a complaint against the person or persons who, he is satisfied, have committed an offence. The section does not contemplate that the Court should send the case to a Magistrate for inquiry whether the offence, it suspects, has been really committed, and for prosecution if the Magistrate is so satisfied. The Court must be satisfied

The Court complaining must be satisfied that there is a *prima facie* case. that there is a *prima facie* case against each person sent to the Magistrate and then can lay a complaint under sec. 476."

"It is not sufficient that the Magistrate to whom the complaint is made under sec. 476 is entitled to hold an inquiry under sec. 202 Cr. P. C. Generally he will consider that the Court has made the complaint is sufficient to justify issue

of process against the accused at once. But, even if under sec. 202 an inquiry is held the persons complained against have no opportunity to show their innocence till after they have been summoned."

257. Similarly, it has been held that before the Court makes the inquiry it may be of opinion that it is expedient in the interests of justice to make the inquiry. The "opinion" must be the "opinion" of the Court making the order. Where a Munsiff made an order at the instance of the District Judge, the High Court held that the order of the Munsiff was bad. *Riazul v. R.*, 1909) 4 L. C. 260 : s. c. 10 Cr. L. J. 525.

258. On appeal by a person convicted by a Subordinate Magistrate of an offence under sec. 411 of the Penal Code, the Sessions Judge set aside the conviction and proceeded to say that the District Magistrate should proceed against certain witness who had given evidence for the accused in the Court of first instance. It was held that neither sec. 457 nor sec. 476 Cr. P. C., nor any other provision authorized the Judge to make such an order, and that it was *ultra vires* and illegal :— *Nalpal*, (1889) 9 A. W. N. 95.

259. It is permissible, however, as held in *Shabbir Hasn.*, v. *R.*, (1927) 28 Cr. L. J. 986 s. c. 105 L. C. 810, (All), (which was a case of complaint by a Civil Court in a forgery case), that under sec. 476 of the Criminal Procedure Code, the preliminary inquiry has to be made by the Civil Court itself. If it so desires, an inquiry may be ordered by the Police, but in such a case when the police papers arrive, the Civil Court has to determine whether it is necessary to take action against particular persons under sec. 476, and should record a finding to that effect against each individual person against whom complaint is made.

Assistance of Police may be taken but the complaining court must determine whether it is necessary to take action.

As to admissibility of statements under sec. 161, Cr. P. C., in an inquiry under sec. 476, Cr. P. C., see *post* ¶ 259-A, p. 180, and ¶ 393.

In the case of *Fazlar Rahman v. R.*, (1930) 31 Cr. L. J. 1055, 1058 (Cal), one of the questions before the High Court was whether the police report could be taken into consideration in a prosecution against the abettor of a 'crime under sec. 211 and whether preliminary inquiry includes inquiry by Police Officer. The High Court reviewed the substantive law and the case-law on the subject and made the following observation :—

"Before making a complaint under sec. 476, the learned Magistrate has asked the C. I. D., to report on the complaint. This inquiry was a preliminary inquiry as contemplated by sec. 476. It is argued on behalf of the appellant that the preliminary inquiry under sec. 476 should be conducted by the Court and not by any other agency as is provided for by sec. 202, Cr. P. C. The wording of sec. 476 is so plain that it can hardly be argued that the words 'such preliminary inquiry' in the section should be qualified by reading into it 'by the Court itself' words which the Legislature has not thought fit to use. The section simply says that if the Court is of opinion that an offence has been committed in respect of a judicial proceeding before it such Court may after such preliminary inquiry, if any, as it thinks necessary record a finding etc. This section gives the discretion to the Court to hold or not to hold a preliminary inquiry. If the Court is of opinion that no preliminary inquiry is necessary it may at once make the complaint. If, on the other hand, it thinks that it is desirable to have a preliminary inquiry, he may adopt any course for the purpose of such an inquiry. The words 'preliminary inquiry' under sec. 476 may be co-extensive with if not wider than the words 'inquire into the case' in sec. 202, Cr. P. C. There is no direct authority on this point but the question did come up for observations in some cases. In *Chamari Singh v. Public Prosecutor of Patna*, (1924) 26 Cr. L. J. 170 : L. L. R. 4 Pat. 24, the Sessions Judge made a complaint under sec. 476 and sent the case to the Magistrate to inquire

if any offence was committed by the accused and, if so, to prosecute him under certain sections of the Criminal Procedure Code. This procedure the learned Judges condemned and observed : 'It is for the Court acting under sec. 476 to make an inquiry that is necessary and then to make a complaint against the person or persons who, he is satisfied, have committed offence.'

"They do not mean to lay down that it is the Court acting under sec. 476 which must hold the inquiry. What they mean is that the Court acting under that section should make an inquiry and make a complaint as the result of such inquiry and not delegate the function to another Court for they observe that this section does not contemplate that the Court should send the case to a Magistrate for inquiry as to whether an offence has been really committed and for prosecution if the Magistrate is so satisfied. This decision does not help the appellant as it only lays down that an inquiry preliminary to a complaint should be made by the Court which does not necessarily mean by the Court itself examining witnesses. The case of *R. v. Waman Dinkar* (1918) L. L. R. 43 Bom. 300, is not also in point. It does not support the appellant but it may be turned against him on some of the observations made in that case. There the Assistant Collector who had sanctioned the prosecution made a complaint by holding a preliminary inquiry in the shape of a part by himself and the rest of it by the C. I. D. It was held that the Assistant Collector was bound to hold the whole inquiry himself as he had started it. In *Raja Rao v. R.*, (1926) L. L. R. 50 Mad. 660 : s. c. 27 Cr. L. J. 1149, the point on behalf of the accused was that they were not allowed at the preliminary inquiry to cross-examine the witnesses produced against them. Waller, J., observed :—

"What a Court has to decide under sec. 476 is (a) whether an offence of the kind contemplated appears to have been committed, and (b) whether it is expedient in the interest of justice that it should be further inquired into.



In order to arrive at a decision, the Court may, if it thinks fit, hold such preliminary inquiry as it considers necessary. The nature, method and extent of the preliminary inquiry are, it seems to me, entirely at its discretion."

"This observation of the learned Judge is against the appellant in so far as it holds that 'the nature, method and extent' of the inquiry are in the discretion of the Judge. The method adopted in the present case by the learned Magistrate was to have an inquiry made by the C. I. D. The only case which lends some support to the appellants' contention is the case of *Sakhi Rai v. R.*, (1919) 49 I. C. 917; 20 Cr. L. J. 245, a decision of a single Judge. The facts shortly stated were that a person lodged a complaint before a Sub-Divisional Officer who without examining him on oath ordered the complaint to be put up with the police report. He subsequently passed an order calling upon the complainant to show cause why he should not be prosecuted under sec. 211. In showing cause the complainant produced several witnesses who were examined under the order of the Sub-Divisional Officer by different Subordinate Magistrates. On a perusal of the police report and the evidence recorded by the Magistrate the Sub-Divisional Officer made a complaint against a witness for the complainant under sec. 476, on a charge under sec. 193, I. P. C. The learned Judge held that the complainant could be called upon to show cause why he should not be prosecuted only under sec. 476 and that the preliminary inquiry to be held under sec. 476 could not be directly held by any other Magistrate except the Sub-Divisional Officer himself who on the police report thought that the complaint was a false one. In that point of view the learned Judge was of opinion that the evidence recorded by the Subordinate Magistrates was recorded without jurisdiction and could not form the basis of prosecution. On the facts of that case the decision is right as the Sub-Divisional Officer could not without entrusting the holding of the preliminary inquiry to

a Subordinate Magistrate, merely deligate the work of recording evidence to such Magistrate while himself assuming to hold the preliminary inquiry. But if the learned Judge meant to lay down the law generally that the preliminary inquiry could not be made except by the Court acting under sec. 476, I beg to express my respectful dissent. The question now before us was not directly raised in that case and the observation made by the learned Judge must be taken in connection with the particular facts of that case. On the other hand, a decision of the Allahabad High Court in *Shabbir Hasan v. R.*, (1927) I. L. R. 40 All 26: s. c. 28 Cr. L. J. 986, supports the view I have expressed. Dalal, J., is reported to have there said :

"If the Civil Court so desires an inquiry may be ordered by the Police but in that case when the police papers arrive the Civil Court has to determine whether it is necessary to take action against particular persons under sec. 476."

"The result of an examination of these cases and of the consideration of the words of sec. 476 itself is that the preliminary inquiry mentioned in that section may be conducted by the Court either by itself or by any other method available. This appeal accordingly fails and is dismissed."

The next appeal (No. 934 of 1929) is by Fazlar Rahman who was not the complainant nor does it appear from the record that he was in any way connected with the complainant. Afaq Ali's case is that this man was the wire-puller behind the screen. His case is that he had a long standing dispute with the appellant Fazlar Rahman for possession of a plot of land in their native country and that the complainant, Aziz Mia, was set up by this appellant to lodge a false complaint against him. The Criminal Investigation Department held an inquiry into this matter and reported against both. On receipt of the report the learned Chief Presidency Magistrate said that it was expedient for the ends of justice that an inquiry should be made into an offence under section 211, I. P. C., against both. Under that section a person who

institutes a criminal proceeding as also a person who causes such proceeding to be instituted may both be guilty of an offence under that section. The question before us is whether this Fazlar Rahaman can be said to have committed an offence in or in relation to a proceeding in the Court of the Chief Presidency Magistrate within the meaning of sec. 476, Cr. P. C. That section is not restricted to the party making the complaint or actually before the Court but is wide enough to include any person who appears to have committed an offence mentioned in sec. 195 (1) (b) which is not restricted to parties to the proceeding like cl. (c) of that section. The Court has, therefore, jurisdiction to prosecute a person who causes a false complaint to be lodged. All that section 476 requires is that the Court should be satisfied that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to it to have been committed in or in relation to a judicial proceeding. It does not speak of a party to the proceeding. An offence enumerated in sec. 195 (1) (b) may be committed by a person who is not a party to the proceeding but if the Court is satisfied that such an offence in relation to a judicial proceeding has been committed, it can lodge a complaint under sec. 476 against any person committing the offence : See *Shabbir Hasan's* case. We agree with the view taken by the Full Bench of the Rangoon High Court in *R. v. Syadkhan* (1925) A. L. R. 1925 Rang. 321 : s. c. 27 Cr. L. J. 4 ; 1 L. R. 3 Rang. 303 (F. B.). We think, therefore, that the order passed by the Chief Presidency Magistrate sanctioning the prosecution of Fazlar Rahaman is not illegal."

259-A. In this connection it may be stated that the Rangoon High Court in the case of *U Htin Gyaw v. R.*, (1927) 1 L. R. 5 Rang. 26 : s. c. 28 Cr. L. J. 433, held that sec. 162 Cr. P. C., does not prohibit the use of statements, made by any person to a Police Officer in the course of an investigation under Chapter XIV of that Code, in proceedings under sec. 476 of the Code,

Statement made to Police Officers, whether can be used in proceedings under sec. 476, Cr. P. C.

in cases where the alleged offence which is under consideration in the proceedings under sec. 476 was not under investigation at the time when the statements were made. In this case the accused were charged under sec. 211 and 193 I. P. C., for falsely charging some persons with murder and for giving false evidence. In delivering the judgment the High Court added, "We note that we do not intend this answer to be read as involving a decision of the question whether statements made to the Police in an investigation under Chapter XIV of the Code in respect of one alleged offence can be used at an inquiry or trial in respect of a different offence which happened to be separately under investigation at the time when the statement was made. All that we desire to say is that the wording of sec. 162 does not prohibit the use of statements made to the Police in the course of an investigation under Chapter XIV in cases where the offence, which is the subject-matter of the inquiry, was not under investigation at the time when the statement was made, and that, therefore, in the particular cases with which these appeals deal, the provisions of sec. 162 of the Code cannot be read as prohibiting the use of statements, made to the Police in the course of the investigation of other offences, in the proceedings under sec. 476 of the Code in respect of alleged offences which were not under investigation at the time when the statements to the Police were made.

260. It is necessary that the whole of the preliminary inquiry ought to be considered by the Court directing the prosecution. He can apply to the District Magistrate as the head of the Police for the assistance of the C. I. D., and the fact that he *takes the assistance of* the District Magistrate does not make him *functus officio* and deprive him of his jurisdiction to pass an order under this section. *R. v. Waman Dinkar*. (1918) I. L. R. 43 Bom. 300.

In this case the High Court remarked, "It is to be observed that the preliminary inquiry to be made is only such inquiry as may be necessary and it cannot be denied in this

case that some inquiry at least was made by the Assistant Collector himself. It does not, therefore, appear to me to be a defect which would deprive him of the jurisdiction that he took the precaution of making a more careful and deliberate inquiry with the assistance of the Criminal Investigation Department. It seems to me that that was all he did and that his reference to the District Magistrate was merely to that officer as the Executive Controller of the Police and not to him in his judicial capacity as the District Magistrate. It is difficult in any case to see how the reference to the District Magistrate could have deprived the Assistant Collector of jurisdiction under sec. 476 Cr. P. C."

261. An inquiry before a complaint may be made on its own motion by a Court before which an offence referred to under sec. 195 Cr. P. C., is committed or on an application may be made by a person to such Court on this behalf.

A person may be called upon under sec. 476 Cr. P. C., to show cause why he should not be prosecuted in respect of an offence to which that section is applicable *even though a previous proceeding under sec. 476 at the instance of a party has been dismissed for non-prosecution.*

Application for  
prosecution dropped.  
—subsequent com-  
plaint by a Court.

In *Harekrishna Parida v. R.*, (1929) 1 L. R. 8 Pat. 736. Chatterji, J., observed, "It is undisputed that there is no provision for review in the Code of Criminal Procedure and it goes without saying that the Court cannot revise its final order except in such cases for which provision has made in the Code, for example, in sections 395 and 484 of the Code. But the point is: What is the scope of sec. 476, Criminal Procedure Code? It provides that in the matter of certain offences committed in or in relation to a proceeding in a Court such Court may make a complaint thereof in writing and shall forward the same to a Magistrate of the 1st class who shall proceed according to law as if the complaint is one made under sec. 200, Criminal Procedure Code. Thus, the proceeding under sec.

476, Criminal Procedure Code, terminates in a mere complaint which can be taken cognizance of by the Magistrate as in the case of an ordinary complaint made under sec. 200, Cr. P. C. *A person can change his mind as to whether he will file a complaint or not; on the same principle it may quite properly be stated that the complaining Court may also alter its mind and decide, on proper materials being placed, that it would make a complaint. The crucial point to be remembered always is whether it is expedient in the interests of justice that an inquiry should be made into any particular offence.*" See the case of *Chqmari Singh v. Public Prosecutor*, (1925) 6 P. L. T. 225: s.c. I. L. R. 4 Pat. 24.

A complaint may be made by a Court under sec. 476, Criminal Procedure Code, *even when it is moved to do so by a person who was not a party to the proceedings* in which an offence under sec. 195 Cr. P. C., is committed.

In the above mentioned case the same Judge further said, "Section 476 of the Criminal Procedure Code provides that the complaint may be made by a Court either on an application or otherwise. Therefore it is immaterial whether the present application is made by a person who was not a party to the original suit. \* \* \* *There is no reason to refuse to take action because he brings the fact to the notice of the Court if it is expedient in the interest of justice that an inquiry should be made into the offence referred to.*"

When a Pleader moves the Court for a complaint without a fresh *vakalatnama*, even assuming that there is an irregularity in the Pleader thus appearing *qua* a Pleader, action taken by the Court on being thus moved is not *ultra vires* inasmuch as the Court may move under sec. 476 *suo moto* or on the application of any person. Besides, the rule is that a *vakalatnama*, once filed, remains in force in all the different stages of the case. "Thus any Court which from any source acquires knowledge that there is a probability that one of such offences as are mentioned

Complaint may be made by a Court even at the instance of a person who is not a party to the proceeding.

Complaint on application by Pleader, not properly authorized.

in sec. 195, Cr. P. C., has been committed, ought as a public duty in suitable cases make a complaint under sec. 476 Criminal Procedure Code," See the case of *Purna Chandra v. Shalkh Dhalu*, (1930) 34 C. W. N. 914: s. c. 52 C. L. J. 87.

It was held in the case of *Shanker Sahai v. R.*, (1930) 125 L. C. 838: s. c. 31 Cr. L. J. 938, (O), that Complaint at the instance of a private person, when to be made. proceedings under sec. 476, Cr. P. C., should not be undertaken on the application of private persons unless the prosecution is clearly in the interest of the State and is reasonably certain to result in a conviction.

262. When there are more than one person accused in the case the Court must be satisfied that there is a *prima facie* case against each person sent to the Magistrate and if he is so satisfied then he can lay a complaint under sec. 476, Cr. P. C.

When conspirators, abettors and persons who attempt to commit offences, are concerned in offences under sec. 182 or 211 I. P. C., the public servant or the Court before whom the offence is committed shall make complaint against such conspirators, abettors etc., under sub-sec. (4) of sec. 195 Cr. P. C., and in an inquiry under sec. 476 Cr. P. C., for an offence under sec. 211, I. P. C., the Court may inquire about such offenders who are not parties to the proceedings. See *R. v. Balmokand*, (1928) 1 L. R. 9 Lah. 678; and *Bachu Behari v. R.*, (1919) 52 I. C. 390: s. c. 20 Cr. L. J. 630 (Pat).

The cases of *Giridhari Lal v. R.*, (1916) 21 C. W. N. 950, and *R. v. Waman Dinkar Kelkar*, (1918) 43 Bom. 300, decided before the amendment of 1923 holding that complaint of a Court is not necessary against abettors, conspirators etc., are no longer good law. See sec. 195 (4) Cr. P. C.

263. In *R. v. Syed Khan*, (1925) 1 L. R. 3 Rang. 303: s. c. 91 I. C. 36: 27 Cr. L. J. 4, (F. B). it was held that a Court has jurisdiction to make a complaint under sec. 476 Cr. P. C., in respect of an offence Court's jurisdiction—complaint against the abettor.

under sec. 211 read with sec. 109 I. P. C., against a person who was not himself a party to the proceeding which forms the subject of the complaint.

In the case of *Akhla Kulla v. R.*, (1930) 52 C. L. J. 149 : s. c. 31 Cr. L. J. 1145, (Cal), it was held that the Court may make a complaint against a person under sec. 476 Cr. P. C., for an offence under sec. 211 I. P. C., if it is of opinion that the proceeding before the Court was caused to be started by that person, though he was not a party to the proceeding before it. The High Court pointed out that "(i) under sec. 211, I. P. C., a person who institutes and also a person who causes to be instituted, a criminal proceeding which is proved to be false may be prosecuted for an offence under that section ; and under sec. 195, Cr. P. C., cl. (4), a person who abets the commission of an offence may also be prosecuted under that section. (ii) Section 476 does not speak of a party to a proceeding. It says that the Court can order further inquiry in a criminal case in respect of any offence referred to in sec. 195 (1) (b) (c) which appears to have been committed in or in relation to a proceeding in that Court. The words 'in' and 'in relation to' must be given their meaning ; otherwise there is no sense in using those words. An offence may be committed by a person *in relation* to a judicial proceeding though he may not be a party to the proceeding or though it may not have been committed by that person *in* a judicial proceeding. (iii) The offences with which the petitioner is charged are covered by sec. 195 (1) (b) which are not restricted to the party committing the offence or in relation to a proceeding in Court which is similarly worded as sec. 476. A different consideration may arise in respect of an offence mentioned in cl. (c) of sec. 195 (1). The High Court observed, "We are fortified in this view of ours by a Full Bench decision of the Rangoon High Court in *R. v. Syed Khan*, (1925) 1 L. R. 3 Rang. 303 : s. c. 27 Cr. L. J. 4."

"The distinction seems to be this that if a false information is lodged to the Police with the conspiracy of several persons



then all of them may be prosecuted for lodging false information. If the person who lodges the information goes to the Court without the assistance or collusion of the abettors the Court may not have jurisdiction to order prosecution of the persons other than the man who actually gave the information. But where it is apparent that several persons combined together to lodge a false information with the Police and also lay a false complaint in Court, the Court will have the power to pass orders against all the persons under sec. 476 who had thus conspired. The case-law on this point is not very clear as will appear from the judgment in the case of *Jadu Nandan Singh v. R.*, (1909) 1 L. R. 37 Cal. 250, where all the cases have been noted ; but it is to be noticed that the preponderance of judicial opinion is that in cases coming under sec. 195 (1) (b) the Court has authority to order the prosecution under sec. 476 in respect of offences mentioned therein whether committed by a person to a proceeding or by a person not apparently connected with the proceeding. In *Dharmdas Kavar v. R.*, (1909) 7 C. L. J. 373, sanction was given for the prosecution of two persons on the allegation that they had instigated the complainant to lodge a false information. That order was set aside by this Court on the ground that the information was lodged only before the Police and, therefore, the Court had no jurisdiction to sanction the prosecution of those persons. The decision of the Court did not rest on the ground that the party against whom sanction was given was not a party to the proceeding." For these reasons the High Court was of opinion that the order of the Magistrate, directing the prosecution of the petitioner was passed with jurisdiction.

Similarly, it was held in the case of *Fazlar Rahman v. R.*, (1930) 126 L. C. 553 : s. c. 31 Cr. L. J. 1055, (Cal), that where a Court is satisfied that an offence enumerated in sec. 195 (1)

Complaint against a person not a party to the judicial proceeding.

(b) Cr. P. C., has been committed before it in relation to a judicial proceeding it can lodge a complaint under sec. 476 of the Code against the person who has committed the offence, even though

he was not a party to the judicial proceeding. A Court can, therefore, order the prosecution of a person who causes a false complaint to be lodged before it by another.

In the case of *R. v. Balgaunda*, (1930) 1 L. R. 55 Bom. 461, 466, in explaining the meaning of secs. 195 and 476, Beaumont, C. J., said, "There has been considerable difference of opinion amongst the High Courts of India as to the meaning of secs. 195 and 476 of the old Code and it is suggested that this Court has taken the view that sec. 476 is an independent section and not controlled by sec. 195. I am not satisfied that that view has formed the ground of any actual decision by this Court, and I myself think, as a matter of construction, that *both under the old Code and the new Code, sec. 495 is a corollary of sec. 195*. It seems to me that the reasoning of the Full Bench of the Madras High Court in *Govinda Iyer v. R.*, (1919), 1 L. R. 42 Mad. 540, is unanswerable upon that point. But *I do not think that it follows from that that it was not competent for the Court under sec. 476 of the old Code to make a complaint against persons who were witnesses, and not parties, in the proceedings which came before the Court and to which sec. 195 applied. Section 195 is a disabling section, and sec. 476 is an enabling section, and I see no inherent reason why the powers conferred by sec. 476 should be strictly limited by reference to the disabilities imposed by sec. 195. For the purposes of this appeal the only sub-section of sec. 195 which is relevant is (1) (c), and reading that sub-section with sec. 476 it seems to me to come to this, that if once it is ascertained in judicial proceedings that there is an offence described in sec. 463 of the Indian Penal Code or punishable under sec. 471, 475, or 476 of that Code and such offence appears to have been committed by a party to the proceedings, then under sec. 476 the Court can inquire into the matter, and if it comes to the conclusion that other persons also, for example, witnesses, are guilty of the offence, I think that it can refer the whole case to a Magistrate for an inquiry and committal*. It seems to

me that *the words of sec. 476 of the old Code are wide enough to justify that conclusion. That conclusion is also directly justified by the decision of this Court In re Devji vald Bhavani, (1893) 1 L. R. 18 Bom. 581, in which it was held that a case could be dealt with under sec. 476 in respect of witnesses as well as of parties.*"

Thus from the above it will be seen that it is competent to the Court under sec. 476, Cr. P. C., to make a complaint against persons who are witnesses and not parties in the proceedings.

264. It is desirable, that where a party to a proceeding in a Court has committed an offence and the offence has been abetted by persons who are not parties, that all the persons concerned in the offence should be tried and not only those who are parties to the proceeding in which the offence is committed. (*R. v. Rafimdin, (1927) 28 Cr. L. J. 978 : s. c. 105 L. C. 802 (Sind).*)

265. Following the ratio in the case of *Balmukand* (see *ante*, ¶ 262), it may be said that if a Judge desires to take action against persons believed by him to be accomplices in an offence committed by a party to the proceeding, he should make a proper inquiry himself and may also take the assistance of the Police through the Magistrate, or through some officer subordinate to him, and after considering the report of such inquiry, he should record a finding separately in the case of every person, that is necessary in the interests of justice that complaint should be made into a particular offence and make a complaint accordingly.

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## CHAPTER X.

**Consideration before a complaint is made by the Court.—Time within which the complaint is to be made.—What a complaint should contain.—Commitment instead of a complaint.**

266. We have already seen that before a complaint is made by a Court there should be a sufficient *prima facie* case. There are, certain considerations which should guide the Courts in exercising the discretion as to whether a complaint should be filed or not. We will cite below the cases laying down the principles, premising that many of the reported decisions deal with sanctions as were given before the amendment of secs. 195 and 476 Cr. P. C., but the principles applicable to such sanctions apply equally and indeed with greater force to complaints under sec. 476; for, the Court now takes a greater responsibility in making a complaint than what it used to do in granting sanctions under the former law. • •

267. The initiation of proceedings puts the Judge very much in the position of a prosecutor. The Court should not proceed *except where the propriety or necessity is unmistakable*. See *In re Koonj Beharee*, (1869) 11 W. R. (Civ) 171, 172.

In *re Ram Prasad Malla*, (1909) I. L. R. 37 Cal. 13, 20, it was observed, "That the provisions of the law itself, as well as the principles underlying them, are simple, intelligible and reasonable. In the first place, a charge such as that we are now considering, depending as it does on intention, knowledge and involving the proof of a negative, is easily preferred, but by no means easily established; and, as prosecutions ending in failure are to be deprecated as being calculated to do

Considerations before a complaint is made.

Reasons for consideration before a complaint is made.

harm rather than good, *they ought not to be undertaken without considerable circumspection and care.*

Secondly, it is manifestly unfair to put a plaintiff or complainant, so to speak, out of the witness-box into the dock without giving him a full opportunity for proving his own case or showing that he had grounds for proceeding.

• Thirdly, offences of this kind are essentially — and they are so classified in the Penal Code — offences against public justice; whence it follows that *they ought to be pressed primarily in the interest of public justice*, and never as a means of satisfying a private grudge."

268. "It is the duty of a Court to make a complaint in every case that comes to its notice of an offence which cannot be tried except on the complaint of a Court, and there are only two reasons that can justify it in not doing so. One is that the offence is *trivial* and the other that *the evidence available is not sufficient to make a conviction probable*. A Police Officer aware of the commission of a cognizable offence is in exactly the same position; he is bound to put up a *chalan* unless one of these two reasons to the contrary exists." (See *Mritgunjay Prasad v. Ramrao*, (1926) 96 L. C. 866: s. c. 27 Cr. L. J. 1010 (Nag).

Duty of the Court to complain when the offence is known to have been committed unless offence is trivial or evidence is insufficient.

At the same time a case should not be lightly started with the sole object of harassing the informant. A public servant's mind should not be influenced by such a motive. A complaint should not be made for the satisfaction of a private grudge.

269. A prosecution should not be started, as a matter of course, but only when the Court is satisfied that the interest of justice requires a prosecution, and there is a strong *prima facie* case against the accused. In *Gauri Sahai*, (1883) 1. L. R. 6 All. 114.

Complaint is to be made when there is a strong *Prima facie* case.

In *Sube Khan v. R.*, (1927) 28 Cr. L. J. 293: s. c. 100 L. C. 373; (Lah), it was held that the prosecution should not be started under sec. 476 Cr.

No complaint when prosecution is bound to fail.

P. C., where it is bound to end in failure.

The prosecution is only to be made after careful consideration, and having in view the ends of justice. It is desirable in most cases that the Court should conclude the case and have all the facts before it before a complaint is made and that it should not do so at an early stage of proceedings. See *In re Chundra Kant Ghose*, (1888) 3 C. W. N. 3, 4.

In the case of *Abdul Husen v. R.*, (1913) 15 Cr. L. J., 33, 35 : s. c. 22 L. C. 177 (Nag), Hallifax, A. J. C., said, "I must point out that sec. 476 requires the Magistrate to form an opinion 'that there is ground for inquiring into any offence referred to in sec. 195.' This has been rightly and fairly interpreted to mean that *there must be a reasonable prospect of a conviction*, because without that there could not be ground for another Magistrate to waste his time in holding the inquiry. But the section does not say that before a Magistrate orders a prosecution he must try the whole case and be absolutely satisfied that the accused cannot by any possibility escape a conviction."

Before a Court is justified in making an order under sec. 476, directing the prosecution of any person, it ought to have before it direct evidence, fixing the offence upon the person whom it is sought to charge, either in the course of the preliminary inquiry referred to in that section, or in the earlier proceedings out of which the inquiry arises. It is not sufficient that the evidence in the earlier case may induce some sort of *suspicion* that the person had been guilty of an offence ; but there must be *distinct* evidence of the commission of an offence by the person who is to be prosecuted. *Khepu Nath v. Gritshi Chunder*, (1889) L. L. R. 16 Cal. 730. The same view has been taken in *Ganda Mal v. R.*, (1920) 21 Cr. L. J. 601 s. c. 57 L. C. 169, (Lah).

A complaint under sec. 476, Cr. P. C., should not be made on grounds which at their worst do not amount more than mere suspicions. See *Chandan Lal v. R.*, (1928) 109 L. C. 358 s. c. 29 Cr. L. J. 534, (Lah).

270. It was pointed out in *R. v. Gopal Barik*, (1906)

Even where a case is found false, no complaint should be made where there are different conclusions on the evidence.

I. L. R. 34 Cal. 42, that it is not in every case, which a Magistrate considers to be false, that he should complain for the purpose of prosecution under sec. 211 I. P. C. Each case

must be judged by its own facts. Where, as in this case, the Magistrate and the Judge came to different conclusions upon the evidence, which was of a doubtful character and complainant was a boy of twelve years of age, it was held that the Magistrate should not have complained,

271. Again, it was held in *Raghupat Sahay v. R.*,

When the trial Court and the Appellate Court differ no prosecution should be started.

(1921) 66 I. C. 333 : s. c. 23 Cr. L. J. 272,

(Pat), that although a Court directing a prosecution for malicious prosecution is endowed with considerable discretion, yet it is neither safe, nor desirable, on the part of the Appellate Court to conclude malice where there is a split of opinion on the point between the first Court and itself. On this ground the order of prosecution by the Appellate Court was set aside by the High Court.

272. In lodging a complaint in writing for prosecuting

'Disbelieving a case is different from considering it as false.'

for false complaint or information one must look into the circumstances of the case. It should be borne in mind that it is one thing to *disbelieve* an information and it is another thing to consider that it is *false*. A case under sec. 182 or 211 should not be started unless there is clear and sufficient materials to prove that the case as stated in the information is *false*. There may be cases in which one can unhesitatingly say that the information is false; as for instance, when it is found that the property said to have been stolen has not left the complainant's possession or where a person said to have been wounded or killed is found to be unhurt. But generally such cases are rare. The burden of proof, that the story for the prosecution is true, is on the prosecution. This is true when the accuser accuses any body and also when the accuser figures as an

accused person. When there is not *sufficient* evidence to prove that the information is true, it does not necessarily follow that the accusation is false. When the informant becomes the accused, the Court is to start with the presumption of innocence. It lies with the prosecution to prove that the information was false to the knowledge of the informant and in a case under sec. 211 to prove that the information was maliciously false to the knowledge of the informant. Such evidence in many cases is very difficult to obtain, and that accounts for frequent failure of cases under sec. 182, or sec. 211 I. P. C.

273. The mere acquittal of an accused person is not sufficient for making a complaint; there must be something more; there must be a reasonable belief in the mind of the complaining Court that there was no reasonable ground for making the criminal charge; in other words, there must be a belief that in instituting criminal proceedings the petitioner acted knowingly without belief in the truth of the allegations made by him or recklessly without caring whether the allegations were true or false, and the judgment of the trial Court or to show that there is no foundation whatever for the criminal case against the persons who were acquitted. See *Kusum Sao v. Janak Lal*, (1919) 52 I. C. 219: s. c. 20 Cr. L. J. 603, (Pat).

274. Following the observation of Macpherson, J., in the case of *R. v. Baijoo Lall*, (1876) 1 L. R. 1 Cal. 450, 455, it may be said that it is by no means in every instance in which a party fails to prove his case, that the Judge who has decided against such party is justified in exercising the powers given him by the section. So long as it is a case as to which there is any possible doubt, or in which it is not perfectly certain that the Judge's decision must be upheld in the event of there being an appeal, the Judge acts indiscreetly and wrongly in making a complaint.

275. In *Ram Prosad v. R.*, (1912) 17 C. W. N. 379, 389,



Mookerjee, J., pointed out that "*first*, the failure on the part of the complainant to establish the truth of his allegation does not by any means justify the inference that the complaint was false, and, *secondly*, to secure a conviction in this class of cases, it must be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but *entirely inconsistent with his innocence*."

The fact that the complainant fails to prove his case is by itself not sufficient for making a complaint under sec. 211.

It must be established satisfactorily in the mind of the Judge or the Magistrate that the complaint was made with intent to cause injury or that it was a false complaint made with the knowledge that it was false. \* *Bhuan Kafir v. R.*, (1924) 83 I. C. 701 ; s. c. 26 Cr. L. J. 141 ; 6 P. L. T. 365 ; and see also *D. Sunder v. R.*, (1919) 52 I. C. 282 ; s. c. 20 Cr. L. J. 618.

In *Chhedi Upadhyaya v. R.*, (1922) 72 I. C. 76 ; s. c. 24 Cr. L. J. 316, it was pointed out that the *failure* of a complainant to prove his case is not the same thing as the institution of a maliciously false case, so as to sustain a charge of an offence under sec. 211 I. P. C.

276. It must be remembered as Banerji, J., observed in *Din Mohammad v. R.*, (1926) 98 I. C. 465 : s. c. 27 Cr. L. J. 1345, (All), that "a mere belief without any foundation whatsoever does not \* \* \* justify a

A mere belief without any foundation in fact. Court of Justice to send a man for trial \* \* \* That in every case in which a man files a complaint and that complaint is dismissed summarily by a Magistrate, it will be for the complainant to justify that his complaint was a good and correct complaint in his defence is a proposition of law which I am not prepared to accept. \* \* \* Before a Court orders a prosecution under sec. 211 I. P. C., there must be enough materials to justify a complaint being filed, i.e., *there must be enough materials to show that there is a prima facie case. A complaint*

*without any reason which appears from the record directing a prosecution of an accused person, \* \* \* is clearly illegal and should never be filed by a Court."*

277. Often the fact of ill feeling is urged against the complainant as a motive for giving a false information or lodging a false complaint. Ill feeling of the complainant. Now, the fact that there has been ill feeling between the complainant and the persons informed against may lead forcibly to the inference that the informant honestly believed that the person informed against had done what had happened if what he alleges had really taken place, and it may also lead to the inference that the charge was necessarily false. The officer must in dealing with the case be satisfied that the informant had *no reasonable ground at all for believing* that any attempt had been made to commit an offence relating to property or other offence and the whole story was an invention. See the warning of Walsh, J., in *R. v. Mathura Prasad*, (1917) 1 L. R. 39 All. 715, *ante* ¶¶ 82, 109 and see also *Bramananda Bhattacharjee's* case, *ante* ¶ 81.

It may be stated here that sometimes the offences are disclosed because there is enmity between parties, and, but for the enmity the offence would not have been disclosed at all. In such a case a greater caution should be used and no inference of falsity of the information or complaint should be made simply because there is enmity. Consideration of enmity between the parties, — greater caution needed.

278. In *Pitambar v. R.*, (1927) 104 L. C. 904: s. c. 28 Cr. L. J. 888 (All), it was held that before making a complaint under sec. 476, the Court should come to a definite finding that an offence or offences have been committed by the person against whom the complaint is made, and it is not sufficient to record a finding of two alternative offences which are mutually inconsistent. Court should be satisfied that a distinct offence has been committed.

279. It would be an abuse of the powers vested in a public officer or a Court of Justice, if complaints are made or applied on the principle that, though the conviction of the party complained against is a mere possibility, it is desirable that the matter should be threshed out, so that it may be decided whether or not an offence has been committed. No doubt the authority which is called upon to complain under sec. 195 or to take action under sec. 476, need not, and should not, decide the question of guilt or innocence of the party against whom proceedings are to be instituted; but *great care and caution* are required before the criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a complaint is made. See *Jadu Nandan Singh v. R.*, (1909) 10 Cal. L. J. 564; s. c. 1 L. R. 37 Cal. 250, 257; and other cases referred to therein.

280. Prosecution should not easily be started unless there is a very reasonable chance of conviction following. See *Kall Charan Lal v. Basudeo Narain Singh*, (1907) 12 C. W. N. 3. The same view has been taken in the case of *Chaudhry Mandar v. R.*, (1923) 74 I. C. 855; s. c. 24 Cr. L. J. 823, (Pat).

It would be disastrous if there were number of prosecutions ending not in convictions but in acquittals. The result would be that instead of putting down perjury, it would rather tend to encourage it. Therefore, before complaining, the Judge, the public servant, or the Court should be satisfied not only that in his judgment the offence was committed, but that in all probability a conviction will be the result. See *Ram Prosad Roy v. Sooba Roy*. (1897) 1 C. W. N. 400, 401.

281. There is no time limit for lodging a complaint by a public servant or a Court but it should be done without any unreasonable delay.

It has been held in *Thokala v. Yellaturi*, (1925) 92 I. C. 456 : s. c. 27 Cr. L. J. 280, (Mad), that "the power conferred upon a Court under sec. 476 Cr. P. C., to make a complaint to a Magistrate when any of the offences referred to in sec. 195 clauses, (b) and (c), appears to have been committed in, or in relation to a judicial proceeding before it, *is exercisable even after the termination of the proceeding* in which the offence complained of is said to have been committed.

No hard and fast rule can be laid down as to within what time complaint should be made under sec. 476. If a Court after the *lapse of a considerable time* makes a complaint under sec. 476, such complaint is open to the objection that it was made after an undue delay. Each case however, would depend upon its own circumstances.

The effect of the changes made in the Code of Criminal Procedure by the introduction of sections 476-A and 476-B is no longer to make it necessary that a proceeding under sec. 476 should be a part of, or so soon after the termination of the judicial proceeding as to make it a part of, the judicial proceeding."

281-A. In the case of *Ramjan Ali v. Moolji Sicca and Co.*, (1929) I. L. R. 56 Cal. 932, 938, Buckland J., observed, "Section 476 requires *a finding and complaint*. I have known, indeed I have done it myself, a direction given that the judgment has been signed by the Judge \* \* \* to the Magistrate. Unless the judgment has been framed with that end in view, this may lead to a want of precision and ambiguity, which should be avoided at all times, but especially in a criminal matter. The example set by Page, J., of a *separate order containing the requisite finding, setting out in detail specific matters extracted from the proceedings, and directing a complaint to be made in respect thereof, this being followed by the complaint which conforms to the terms of the previous order*, is greatly to be preferred. Such a course avoids the possibility of any mistake as to what is intended."

"It is much to be desired that Civil or Criminal Courts when they make a complaint, *would devote some thought to the matter, frame a proper charge and state in detail the names of the witnesses who were likely to prove the charge.* For want of such information the complaint more often than not results in an acquittal, reflecting discredit on Courts of Law." (Per Dalal, J., in the case of *Gauri Shankar v. R.*, (1929) 120 I. C. 127 : s. c. 30 Cr. L. J. 1158 : A. I. R. 1929 All. 905.

281-B. In the case of *Pitambar v. R.*, (1927) 104 I. C. 904 : s. c. 28 Cr. L. J. 888 (All), it was held that Definite finding in a complaint as to offences committed. before making a complaint under sec. 476 of the Criminal Procedure Code, *the Court should come to a definite finding that an offence or offences have been committed by the person against whom the complaint is made,* and it is not sufficient to record a finding of two alternative offences which are mutually inconsistent. The High Court observed, "What the section requires is that the Court may after such preliminary inquiry as it thinks necessary \* \* \* \* record a finding to the effect that an offence appears to have been committed and make a complaint thereof in writing signed by him as the Presiding Officer of the Court and forward the same to a Magistrate of the first class having jurisdiction. \* \* \* \* In order to comply with the section he must record a finding that an offence or offences have been committed and he must make a complaint in writing signed by him and setting out the particulars of each of such complaints which he intends to forward to the Magistrate."

In the case of *Shankar Sahai v. R.*, (1930) 125 I. C. 836 : s. c. 31 Cr. L. J. 938, (O), it was pointed out that when a complaint is made under sec. 476 Cr. P. C., *the officer making the complaint must state the evidence on which he relies, so that the Magistrate to whom the case is referred may be able to ascertain what the evidence is on which the prosecution case is based.*

281-C. The Court should expressly find that "it is expedient

in the interests of justice" that a complaint should be made into the offences under sec. 476 Cr. P. C., referred to in sec. 195, sub-sec. (1), cl. (b) or cl. (c). See the case of *Keramat Ali v. R.*, (1928) I. L. R. 55 Cal. 1312. When there is no such express finding but when there is a finding that a clear *prima facie* case has been made out and that coupled with the fact that a complaint has been ordered it is not sufficient to enable the Court to infer that the opinion of the Court was expedient in the interests of justice. "Expedient in the interests of justice." that such an inquiry should be made. See the case of *Sutendra Nath v. Kumeda Charan*, (1930) 51 Cal. L. J., 208, in which the High Court observed, "It is not possible to say that an express statutory provision for a finding to be recorded is satisfied by inferences which may or may not be drawn from other findings of fact arrived at by the lower Appellate Court." See also the case of *Satis Chandra Maulik v. R.*, (1930) 52 C. L. J. 52.

But it was pointed out by C. C. Ghose, J., in the case of *Bhuban Chandra Pradhan v. R.*, (1927) I. L. R. 55 Cal. 279, 284, that a finding that the evidence given was false, followed by a complaint, would probably be sufficient to raise the inference that the Judge found that an inquiry was expedient.

This case was approved in *R. v. Ijjatulla Paikar*, (1930) 35 C. W. N. 400, wherein the High Court (Lort-Williams and S. K. Ghose, JJ.) rightly held that if a Court decides to make a complaint under sec. 476 of the Criminal Procedure Code, *it must record a finding that in its opinion it is expedient in the interests of justice that an inquiry should be made; but the absence of an express finding or a finding in the exact words of the section will not invalidate the complaint. The Court need not repeat the exact words of the section like a parrot. It is sufficient, if the record shows clearly that the Court has applied its mind to the question of expediency and has come to a conclusion that an inquiry is expedient.*

A similar view has been taken by the Lahore High Court in the case of *Naurang Rat v. R.*, (1930) A. L. R. 1930 Lah.

347 : s. c. 1930 Cr. Cases, 395. In this case the District Judge as an Appellate Court holding after an examination of the record that there was sufficient grounds for believing that the receipt was a forgery and sufficient evidence justified the launching of a prosecution directed that a complaint be filed against the petitioners. It was urged before the High Court that *there was nothing stated in the complaint under sec. 476 Cr. P. C., that it was "expedient in the interests of justice" that the petitioners should be prosecuted and that there was reasonable prospect of their conviction after trial.* It was held by the Lahore High Court that there was nothing in the order to throw any doubts on the correctness, illegality or propriety of the finding arrived at by the District Judge. The High Court observed, "*Now the words 'expedient in the interests of justice' are not a formula or incantation which must of necessity appear in every order made under sec. 476.*" This section merely requires that the Court concerned should be of opinion that the interests of justice render it expedient that an inquiry should be made into any offence referred to in sec. 195, sub-sec. (1), cl. (b) or cl. (c) and that the learned District Judge did arrive at such an opinion is sufficiently obvious from his order. He has also arrived at an opinion that there is a reasonable prospect of the conviction of the petitioners as there is sufficient evidence to support a prosecution. Whether this evidence is believed or not and will be sufficient to justify the conviction of the petitioners is quite another matter and one with which the learned District Judge is not concerned nor would it be proper for him to express any opinion in this connection." See also the case of *K. C. V. Reddy v. R.*, (1929) 31 Cr. L. J. 793 (Rang).

### C.—Commitment instead of a complaint.

281-D. When offences referred to in sec. 195, Cr. P. C., are committed before or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, such Court may after due inquiry, instead of making a com-

plaint to the Magistrate, commit the accused person to the High Court or Court of Session under sec. 478 Cr. P. C.

The Section 478 of the Code of Criminal Procedure lays down :—

(1) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under sec. 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(2) For the purpose of an inquiry under this section the Civil or Revenue Court may exercise all the powers of a Magistrate ; and its proceedings in such inquiry shall be conducted, as nearly as may be, in accordance with the provisions of Chapter XVIII, and of Chapter XXXIII in cases where that Chapter applies, and shall be deemed to have been held by a Magistrate."

In the case of *Rameshwar Lal v. R.*, (1927) I. L. R. 49 All. 898 : s. c. 28-Cr. L. J. 668, it was urged on behalf of the accused before the High Court that having started a proceeding under sec. 476, the Civil Court had no authority to proceed under sec. 478 Cr. P. C. In support of the argument it was pointed out that where a Court takes action under sec. 476 and directs a complaint to be laid before a Magistrate there is an appeal against the order directing the complaint to be made. On the other hand, it was argued that if the procedure adopted by the Civil Court is allowed and it is competent to him to pass an order under sec. 478, then the right of appeal, which the person affected would have, had the proceedings been taken under sec. 476, is taken away. Lindsay, J., observed, "It is quite plain to me that there is no right of

Power of Civil and Revenue Courts to complete inquiry and commit to High Court or Court of Session.

Proceeding under sec. 476, subsequently committed to the Court of Session under sec. 478, whether without jurisdiction.



appeal against an order passed under sec. 478. There can be no right of appeal unless the right is conferred by the Statute, and the only right of appeal which is to be found in this

No appeal against Chapter XXXV is referred to in sec. 476.  
an order under sec. 478. There is no corresponding provision relating to the case of an order under sec. 478, and I am satisfied that there is no right of appeal. It appears to me to be impossible to argue that because the " " Civil Court has the option under sec. 478 of sending the case to a Magistrate under sec. 476 or of committing it direct to the Court of Session, he is debarred from the exercise of that option because by passing an order under sec. 478 he deprives the person accused of the offences of a right of appeal against such an order."

281-E. Sub-section (2) of sec. 478 lays down that for the purpose of such an inquiry for committing the accused person to the High Court or Court of Session, the Civil or the Revenue Court may exercise the powers of a Magistrate and the proceedings in such an inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and of Chapter XXXIII in cases where the Chapter applies.

It was held in the case of *R. v. Babu Prasad*, (1917) I. L. R.

40 All. 32, that a Munsiff holding an inquiry under sec. 478 of the Code of Criminal Procedure with a view to making a commitment to the Court of Session is bound to follow substantially the provisions of Chapter XVIII of the Code. Where in such circumstances the Munsiff neither examined the witnesses in the presence of the accused nor explained the charge to them, the commitment was quashed.

Procedure under sub-sec. (2) when not followed,—commitment quashed.

281-F. Where in the course of a judicial proceeding before the Munsiff of Fatehabad in the district of Agra certain offences referred to in sec. 195 Cr. P. C., which appeared to have been committed in Bengal were brought under the notice of the Court, and the Munsiff committed the person suspected of such offences for the trial to the Court of Session at Agra, it was

Jurisdiction of a Court under sec. 478 when the offence is committed in another province.

before the Munsiff of Fatehabad in the district of Agra certain offences referred to in sec. 195 Cr. P. C., which appeared to have been committed in Bengal were brought under the notice of the Court, and the Munsiff committed the person suspected of such offences for the trial to the Court of Session at Agra, it was

held by the Allahabad High Court in the case of *R. v. Khushali Ram*, (1917) I. L. R. 40 All. 116, that the Court had jurisdiction under sec. 478 read with sec. 476 Cr. P. C., to make the commitment.

281-G. Section 479 Cr. P. C., empowers Civil and Revenue Courts after holding a preliminary inquiry to commit to the High Court or Court of Session, indirectly through a Magistrate, as sec. 479 lays down :—

"When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence."

In the case of *Lachhman Prasad Joshi v. R.*, (1929) 124 I. C. 364 : s. c. 31 Cr. L. J. 679 (O), a Revenue Officer conducting mutation proceedings on a disputed succession under the provisions of sec. 40 of the U. P. Land Revenue Act, 1901, acts as a Revenue Court within the meaning of sec. 48 of the said Act and has power under sec. 478, Cr. P. C., to commit to Sessions a person who has committed an offence before him in the course of such proceedings. See *post* ¶ 433.

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## CHAPTER XI.

**Cognizance of cases under sec. 211 on police report.—“Naraji” petitions, i. e., Petitions impugning the correctness of the police report.—The time for filing it.—Its disposal.**

282. In this Chapter we shall consider the cognizance of cases under sec. 211 I. P. C., by the report of the Police Officer, the propriety of waiting for a complaint by the informant to the Court (*naraji* petition), and the disposal of such complaint and the effect of the amendment of sec. 173 Cr. P. C., and the disposal of *naraji* petitions.

283. It should be remembered that when a charge is made before the Police, the report that is sent to the Magistrate by the Police relates to the original charge as laid by the informant, and so far as secs. 182 or 211 is concerned it is not a report on an investigation directed to an offence under sec. 182 or 211 I. P. C.

For, strictly speaking it is not an investigation regarding the falsity of the information about the charge and the investigation is not for ascertaining whether the informant is guilty under secs. 182 or 211 I. P. C. When the case is reported by the Police as false it is because the case as lodged by the informant is not proved, or that there are evidence and circumstances which tend to disprove the case. The report of the Police Officer amounts to no more than that an offence under sec. 182 or 211 or both have been committed by the informant. The report of the Police Officer is not evidence of the crime though it may create a suspicion in the mind of the Magistrate that an offence has been committed, and the falsity of the original charge does not necessarily show that the charge is false to the knowledge of the informant. It is also conceivable that when an investigating officer cannot detect a crime he is reluctant

to register it as undetected. It is a simple matter for him to report that the alleged facts never occurred. There may be even less excusable causes for the Police Officer to report the case as false.

It is a matter to be borne in mind that the object of lodging a first information before the Police is to bring the offence to the notice of the Magistrate and for taking action by such Magistrate. The Police Officer in such a case is only a medium through whom the offence is to be brought to the notice of the Magistrate. The Police Officer should not be the arbiter of the situation. It is only proper that the informant should get an opportunity to represent his case to the Magistrate and this should be before he is indicted. It is always for the Magistrate and not for any Police Officer to decide if an accusation is true or false.

In *R. v. Karimdad*, (1880) L.L. R. 6 Cal. 496, 498, it was observed, "If persons are to be prosecuted under sec. 211 of the Indian Penal Code upon the mere report of a Police Officer that their complaints are not true, the Police are made the Judges whether the complaint is true or false. Such a delegation of magisterial functions is not contemplated by the law, and it requires but little experience of this country to understand how dangerous it would be to the best interests of justice. Magistrates of all grades cannot understand too clearly that, while the Police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of evidence when collected." But see *post* ¶ 289.

The position in these circumstances is that the Magistrate has before him a police report submitting that the informant committed an offence under sec. 211 I. P. C. In the Full Bench case of *R. v. Sham Lall*, (1887) L. L. R. 14 Cal. 707, it was held that the Magistrate derives his jurisdiction to take cognizance of the offence from the police report, which affords ground for *suspicion* that an offence has been

committed. Petheram, C J., in the above case observed, "The facts alleged, if they are true, might constitute an offence under sec. 211, and a Magistrate may take cognizance of such an offence if it is properly brought before him; and it seems to me that, where a state of facts is brought to his notice by a police report, which affords ground for *supposing* that the offence has been committed, he 'has jurisdiction under secs. 191 and 192 Cr. P. C., (now secs. 190 and 192, Cr. P. C.), to inquire into or try the charge himself, or to send it for inquiry or trial to one of his subordinates."

284. . One of the questions before the Full Bench in the case of *Sham Lal*, cited before, was whether the Magistrate, having jurisdiction to make the order of prosecution upon a police report, did exercise a *sound judicial discretion* in doing so. It was answered in the negative. Petheram, C. J., said, "*As before explained, I think that, under the circumstances, the Magistrate would have the jurisdiction. But, as a matter of sound judicial discretion, I also think that in all cases in which there is a suspicion, for it can be called, nothing but a suspicion, arising from circumstances which have come under the Magistrate's notice on the perusal of the report of the investigation into another charge, that some offence, of which no one has complained, has been committed, the Magistrate ought not to take cognizance of such offence under sec. 191, (now sec. 190), and direct that the persons suspected be tried, until some person aggrieved has complained, or until he has before him a police report on the subject, based on an investigation directed to the offence to be tried, and in the cases of alleged false charges, until it is clear that the original charge has been either heard and dismissed or abandoned; and I should add that, in order to show conclusively that such a charge has been abandoned, I think that before the order to prosecute for the false charge is made, the person who made the original charge should be offered an opportunity of supporting it or abandoning it.*" (p. 712).

Norris, J., also said, "I am also of opinion that a Magistrate should not take cognizance of an alleged offence under sec. 211, Indian Penal Code, until the alleged offender has had an opportunity of substantiating the original charge, and such original charge has been disposed of in due course of law." Wilson, J., concurred in the judgments of Petheram, C. J., and Norris, J., and Tottenham and Ghose, JJ., concurred generally in these judgments. Tottenham, J.'s reservation is not pertinent to the question now under consideration.

285. If an opportunity is not given to the informant it may be said in the language expressed in a cognate matter *In re Ram Prasad Malla*, (1909) I. L. R. 37 Cal. 13, 20, that "it is manifestly unfair to put a plaintiff or complainant, so to speak, out of the witness-box into the dock without giving him a full opportunity for proving his own case or showing that he had grounds for proceeding." (See *ante* ¶ 267, p. 189).

The following observations in *Russick Lal Mullick's* case, (1880) 7 C. L. R. 382, equally apply, *viz.*, "To act merely upon the report of the Police, \* \* \* and upon the strength of that report to turn the tables upon the complainant, and to put him upon his defence for making a false charge, without hearing first what he and his witnesses have to say, is extremely unfair. It is virtually allowing the Police to reverse the whole course of the proceedings, and after such an inquiry, as they (the Police Officers) may have thought proper to make to shut the complainant's mouth, and place him in the position of an accused person, without giving him an opportunity of making good his charge.

286. In *Lalji Gope v. Giridhari Chaudhury*, (1900) 5 C. W. N. 106, 107, it was held that a Magistrate does not exercise a proper discretion, who on receipt of a police report that the complaint is false forthwith orders the complainant to be prosecuted under sec. 211 of the Indian Penal Code. The complainant should be given a reasonable time and full opportunity to prove his case. If after a sufficient time no complaint is made there is no reason.

*why the Magistrate should not prosecute such person under sec. 211 of the Indian Penal Code.*

So, in the case of *Chukradar Potti*, (1881) 8 C. L. R. 289, <sup>Reasonable time and opportunity should be given.</sup> the High Court considered that *reasonable time should be awaited to give the complainant an opportunity of stating his case before the Magistrate.* There the appellant on the 23rd June 1881, laid an information of a dacoity at the Police Station. There was an investigation by the Police on more than one occasion, but the case was reported to be false and orders were given on the 26th and 27th July for the prosecution of the appellant. Meanwhile, the appellant had on the 1st July complained that the Police had sided with the Zemindar, and had not made a proper investigation, and he requested that further investigation might be made by a specified officer, and *that the evidence might be taken before him.* He was not examined by the Magistrate and no evidence was taken. The High Court held that the conviction under sec. 211 was illegal, inasmuch as no opportunity had been afforded to the accused of producing all his evidence in support of the charge made by him.

287. In *Jogendra Nath Mookerjee v. R.*, (1905) L. L. R. 33 Cal. 1, the cases of *Chukradar Potti*, cited above; *Sham Lal*, L. L. R. 14 Cal. 707; *Mhadeo Singh*, L. L. R. 27 Cal. 921; *Gunamony Saput* 3 C. W. N. 758; *Budh Nath Mahato*, 4 C. W. N. 305; *Sahitram Agarwala*, 5 C. W. N. 254, were considered. The case was heard by Ranpini and Mookerjee, JJ. They said, "The rulings above cited, and others of a similar character, would seem to have engrafted on the Statute Law a procedure in cases under sec. 211 of the Indian Penal Code, which is not to be found there. They apparently lay down the rule that when a person institutes before the Police criminal proceedings, which on inquiry are found to have no justification, before he can be prosecuted for an offence under sec. 211 of the Indian Penal Code, he must first have an *opportunity afforded* him of proving his case against the accused, and, if he

chooses to impugn the correctness of the police inquiry by petition, he is entitled to have the persons complained against tried on the charge the Police and the Magistrate consider false, or else his statement must be recorded by the Magistrate on oath and his complaint dismissed under sec. 203 of the Criminal Procedure Code."

"We feel grave doubts as to whether there is any justification for such a procedure to be found in either of the Codes. It is argued that it is only fair to a person who has made a complaint against another, which is reported by the Police to be false, to have an opportunity of proving his case against the persons he has charged with an offence. But he may prove this when he is prosecuted for an offence under sec. 211 just as well as, if not better, than when he is in the position of a prosecutor, for the onus of proof is always on the prosecution. Moreover, it may be pointed out that it is unfair to the persons, who have been falsely and maliciously charged with an offence nobody believes they committed, to be put to the expense and harassment of a criminal trial merely for the purpose of giving the complainant a chance of proving his case against them — presumably by false evidence. Such a procedure is unknown to the Statute Law of this country or to the Statute Law of England, Scotland or Ireland."

In the same case it was pointed out that this law is not the law in Madras [*Ramasami v. R.*, (1884) I. L. R. 7 Mad. 292 ; see *post* ¶ 290.],\* or in Bombay [*R. v. Jijibhai Govind*, (1896) I. L. R. 22 Bom. 596 ; see *post* ¶ 292.], or in the United Provinces of Agra and Oudh [*R. v. Raghu Tiwari*, (1893) I. L. R. 15 All. 336 ; see *post* ¶ 289].

In *Jogendra Nath Mookerjee's* case, the Court observed, "We would feel inclined to refer the question of the propriety

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\* Recently the Madras High Court has taken the same view as taken in *Sham Lal's* case and other cases of the Calcutta High Court, see *post* ¶ 291.



of this procedure for the consideration of a Full Bench, if it were not that the case was of *R. v. Sham Lal*, (1887) I. L. R. 14 Cal. 707, is the decision of a Full Bench, which, according to the Rules of this Court, is binding upon us."

288. The Punjab Chief Court in *Kala Khan v. R.*, (1908) 9 Cr. L. J. 190 : s. c. 211 P. L. R. 1908, <sup>The Punjab Chief Court's view.</sup> seems to think that when an information contained in a petition is reported to be false, *the petitioner should be called upon to prove his case*. In this case the petitioners complained to the Deputy Commissioner stating that *bantias* and Hindu shop-keepers would not supply them with necessaries, and asked the officer to take measure for their relief. The petition was sent to the *Tahsildar* for the report and the *Tahsildar* reported that the petition was found to be not true. Upon this, without any complaint by any one, and *without calling the petitioners before him to prove their case*, the Deputy Commissioner issued an order for the prosecution under sec. 182. The Chief Court on revision set aside the order as illegal.

289. The Allahabad High Court in *R. v. Raghu Tiwari*, (1893) I. L. R. 15 All. 336, 338, decided by <sup>Views of the Allahabad High Court.</sup> Edge, C. J., and Aikman, J., held, "In cases *in which sec. 211 especially applies*, and in which a criminal

<sup>Rule of reasonable opportunity to support the case.</sup> proceeding has been instituted, a Court should, in our opinion, as a rule proceed to determine such criminal proceeding instituted in it and should *give the person instituting such proceeding, a reasonable opportunity of supporting his case before proceeding against him for an*

<sup>According to the Allahabad High Court when the trial proceeds in disregard to this rule, the trial is not vitiated.</sup> offence under sec. 211. \* \* \* It appears to us that it has been left to the discretion of the Court to determine when and under what circumstances prosecutions should be proceeded

with under sections 182 and 211. We think that discretion would, as a rule, be rightly exercised by the Court proceeding to dispose of the criminal proceeding *then pending before it* before taking action under secs. 211 or 182 against the person

who had instituted such criminal proceeding, or on whose information such criminal proceeding had been instituted."

In this case Raghu Tiwari on the 11th of December 1892, gave information to the Police that Budhan had committed theft. The Police after inquiry reported that the information was false. On the 19th December a summons was issued against Raghu and on the 24th it was served upon him. The summons called upon him to appear on the 5th January, 1893, to answer the charge. On the 3rd of January Raghu presented to the Court of Magistrate a petition, dated the 2nd of January, 1893, in which he referred to the complaint made by him and to the proceeding against him under sec. 182, and asked that the latter proceeding should stand over until his complaint has been decided. The Magistrate did not comply with the prayer of that petition, but proceeded with the charge against Raghu, and on the 17th January, convicted him on a summary trial of the offence under sec. 182. The High Court held that *the proceeding was entirely regular*, and held that the application of the 3rd January, was filed either, merely as a defence, or for the purpose of delay.

In the same case it was held that the offence under sec. 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. *The offence is complete* although the public servant takes no step towards the institution of such criminal proceedings. The Judges added, "In our opinion, it is in such a case *not at all necessary that the public servant should take any step whatever on the false information before instituting and prosecuting to a conclusion a charge under sec. 182, against the person, who had given such false information.* Assume, as in this case, that inquiries were made on the false information, and that not only was it shown that the information was false, but the corrupt and wicked motive of the informant was apparent; in our

No necessity for calling upon an informant to prove his case under sec. 182 I. P. C.

opinion, it would be absurd that the informant should be called upon to proceed with a false charge which inquiries had shown to be false, and that the proceedings against him under sec. 182 should be delayed until the informant, and such witnesses as he might be able to call in support of his complaint, had had afforded to them by the Magistrate an opportunity of committing the further offence of perjury. We are well aware that it may be objected that in this view the Police are in the first instance made the Judges of whether the informant's complaint was true or false. As the matter would not finally rest with them, and would have to be determined by a competent Court some discretion and reliance may be placed in the Police, and in fact in some cases that discretion is by law reposed in them." [But see the case of *R. v. Karimdad*, (1880) 1 L. R. 6 Cal. 496, 498; *ante*, ¶ 283, p. 205].

In *R. v. Radha Kishan*, (1882) 1 L. R. 5 All 36, *K* made a report at a Police-Station accusing *R* of a certain offence. The Police having reported to the Magistrate that the case was false and the Magistrate thereupon ordered the case to be "shelved." *K* then preferred a complaint to the Magistrate again accusing *R* of the offence. The Magistrate rejected the complaint with reference to the police report. Subsequently *R*, with the sanction of the police authorities, instituted criminal proceedings against *K*, under sec. 182 I. P. C., in respect of the report which he had made at the Police Station, and *K* was convicted under that section. It was held that, before proceeding against *K*, the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the Police had reported against the entertainment of the case. The High Court ordered that the complaint of *K* should be investigated.

Similarly, in *R. v. Jamni*, (1883) 1 L. R. 5 All. 387, *Jamni* complained to the Police that she had been raped by *Ram Prasad*. The Police reported the charge to

be false. Thereupon criminal proceedings were instituted against her under sec. 182 I. P. C. In the mean time Jamni made a complaint in Court again charging Ram Prosad with rape. This complaint was not disposed of, but the proceedings against her under sec. 182 I. P. C., were continued, and she was eventually convicted under that section. It was held that her complaint should have been inquired into and disposed of before proceedings were taken against her under sec. 182, and ordered that the complaint preferred by her should be disposed of in due course of law.

So, in *Sheo Balak v. R.*, (1920) 59 I. C. 369, s. c. 22 Cr. L. J. 81 (All), the accused presented a complaint to the District Magistrate who, without giving him an opportunity of having his complaint inquired into, and even without *any inquiry into the complaint*, called upon the accused to show cause why he should not be prosecuted under sec. 182 I. P. C. It was held that the order of the District Magistrate was illegal and improper, as a complainant can be made to suffer the consequences of his action only when his complaint, after full and open inquiry, is found to be false.

290. In *Ramasami v. R.*, (1894) I. L. R. 7 Mad. 299, *R* made a complaint of theft against *S* to the Police who reported the case as false to the Magistrate. The Magistrate summoned *R* and examined him, but gave him no opportunity to prove the charge by calling the witnesses named by him. The Magistrate then ordered the case to be struck off the file and gave sanction (under the old law) to prosecute *R* who was subsequently brought before the same Magistrate and committed to the Sessions Court and convicted by the Sessions Court under sec. 211 of the Indian Penal Code. It was held that although *R* had no opportunity of proving his case, before he was himself tried, the conviction was not illegal.

291. But recently the Madras High Court in the case of *Murugan v. Guffa Rami Naidu*, (1927) 104 L. C. 625 : s.c. 28 Cr. L. J. 849 : 53 M. L. J. 455, has taken a different view, and has not followed the case of *Ramasami*. In the case of *Murugan*, the accused preferred a false charge to the Police and also took the same facts by way of complaint to the Magistrate. In a motion before the High Court<sup>1</sup> to stay further proceedings it was held that he could not be prosecuted under sec. 211 I. P. C., for preferring the false charge, without a complaint of the Magistrate as required by sec. 476, Criminal Procedure Code, and the High Court followed the case of *Tayebullah v. R.*, I. L. R. 43 Cal. 1152; s. c. 20 C. W. N. 1265.

In this case it was observed, "It would be a most extraordinary result if while the Magistrate was still engaged in trying a complaint and possibly inclined to believe the complaint, the complainant could himself be put into the dock in another proceeding on the allegation that he had preferred a false charge to the Police." See also the case of *R. v. Subbanna Gaundan*, (1862) 1 Mad. H. C. R. 30; post ¶ 299.

292. In *R. v. Jijibhai Govind*, (1896) I. L. R. 22 Bom. 596, the accused complained to the Police that *A* and *B* had robbed him. After inquiry the Police reported to the Magistrate that the charge was false. The Magistrate thereupon struck off the case without holding any further inquiry himself. The accused was subsequently charged and convicted under sec. 211 of the Indian Penal Code. The High Court in disposing of the appeal, said, (p. 600), "As regards the allegation that no opportunity was allowed to the accused by the Magistrate to substantiate the charge before he ordered the complaint to be struck off, we are of opinion :  
 View of the Bombay High Court. *that such a course is no doubt very desirable in the ends of justice, but its omission is not a circumstance which invalidates a commitment duly made, and a conviction otherwise good cannot be set aside on account of such omission. \* \* \* The trial before the Committing*

It is desirable to give opportunity but not compulsory.

*Magistrate and in the Sessions Court offered ample opportunity for the accused person to substantiate his complaint, and the omission is not one which has prejudiced the interests of the accused."*

293. The Court of Judicial Commissioner of Nagpur, in *R. v. Ghansram*, (1908) 4 N. L. R. 136; s. c. *View of the Nagpur Judicial Commissioner.* 8 Cr. L. J. 349, (Nag), followed the view of the law taken by the Allahabad and Bombay High Courts and held that when a complaint of an offence under sec. 182 or 211 of the Indian Penal Code is presented to a Magistrate, it should be disposed of according to law, and there is no provision of law requiring him to first give the accused person an opportunity of proving the truth of the charge he had made.

294. From the above-mentioned cases decided by various High Courts it will appear that they all agree that the informant should get an opportunity to prove his case before he is indicted under sections 182 or 211, I. P. C. Many Calcutta High Court cases hold that as a matter of sound judicial discretion, before the order to prosecute for the false charge is made, the person who made the original charge should be offered an opportunity of supporting it or abandoning it; that is to say, it is improper not to give such an opportunity. While on the other hand the other High Courts hold that it is desirable that the informant should get such an opportunity, but if no such opportunity is at first given it is neither illegal nor improper, and the trial is not vitiated.

295. It seems that the Legislature has appreciated the reasoning of the Judges of the High Court in *Sham Lal's* case and other similar cases by amending sec. 173 Cr. P. C., to the effect that as soon as the investigation under Chap. XIV of the Code of Criminal Procedure by the Police Officer is complete, the officer in charge of the Police Station shall communicate in such manner as may be prescribed by the Local Government, the action taken by him to the person, if any, by whom the information relating to the commission of

the offence was first given. Thus giving the complainant ample opportunities to impugn the correctness of the police report if he is so minded. His silence in some cases after the notice may justify the Court in thinking that he either accepts the police report or abandons his case.

Whether the original charge has been abandoned or not is a question of fact and no general rule can be laid down. It will depend upon the circumstances of each case.

296. According to the view of the Calcutta High Court it is desirable that in these cases *some time must be given* to the complainant, to appear and to object to the report before a prosecution is ordered on the police report.

In *Russick Lal Mullick's* case, (7 Cal. L. R. 382), the High Court observed, "When a charge is pronounced \* \* \* \* false by the Police, proceeding should not be taken by the Magistrate, *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation, and takes no further steps. \* \* \* \* It would be undesirable to dismiss the complaint, and proceed against the complainant without hearing the witnesses, if he desired to call any. A complainant, who runs the risk of adding perjury to an offence under sec. 211, may well be warned against the consequences; but, on the other hand, a Magistrate may entirely fail to understand the rights of a case from the complainant's own account of it: and, without hearing the complainant's witnesses, it may be impossible to understand it properly."

The time so given is meant to show whether the informant had anything to say against the police report. If he does not impugn it, the Magistrate will ordinarily be justified in thinking that the informant accepts the decision of the Police Officer or abandons his case. *The inference as stated before is, however, one of fact, and can be negatived by other facts.*

297. In the Full Bench case of *Sham Lall v. R.*, L. L. R. 14 Cal. 707, Petheram, C. J., held that Sham Lall (the complainant in the case) having made the complaint was entitled as a *matter of common justice to have it inquired* by the Magistrate and that a Magistrate should not proceed and direct that the person suspected be tried until it is clear that the original charge has been either heard and dismissed or abandoned.

In the same case, Norris, J., observed (p. 716), "Sham Lall's petition being, in my opinion, a complaint, it was the duty of the Magistrate to proceed with it according to law ; and it was *none the less his duty so to proceed*, because the charge in respect of which the complaint was made had been returned by the Police as false." (See also *ante* ¶¶ 283, and 284).

298. When a notice under sec. 173 Cr. P. C., is given to the informant about the result of the investigation made by the Police and the Magistrate on receipt of such police report forthwith takes cognizance of the case under sec. 211 L. P. C., the informant of course, gets no time to complain to the Magistrate before the cognizance of the case is taken. Having regard to the circumstances under which a report of a case under sec. 211 may be sent, (see *ante* p. 215), it seems to be proper to entertain a *naraji* petition if the informant comes to the Court to impugn the correctness of the police report within a reasonable time and the *naraji* petition should be disposed of first before the informant is prosecuted under sec. 211 L. P. C.

299. In *R. v. Subbanna Gaundan*, (1862) 1 Mad. H. C. R. 30, it was held that "an indictment for falsely charging could not be sustained if the accusation were entertained and still remained under proper legal inquiry." See *ante* ¶ 291, p. 214.

300. In such cases the position before the Magistrate is that the Magistrate has before him two allegations, each counter to the other, to go upon, and the question with him naturally becomes as to which case should be proceeded with first. It is surely not desirable that there should be two



trials, going on simultaneously and both directed mainly to the elucidation of the same facts, though from different points of view.

301. According to the Calcutta High Court, even if after the start of the prosecution under sec. 211, the accused informant makes a formal complaint to the <sup>Naraji petition after the prosecution has started.</sup> Magistrate, the complaint should be first heard. In the case of *Bishoo Barik*, (1871) 16 W.R. Cr. 67, the Police reported the charge made by Bishoo Barik to be false; then the Magistrate instituted proceedings under sec. 211 of the Indian Penal Code, on the 1st July, and the hearing was fixed for the 14th July; but on the 5th July Bishoo Barik appeared in Court and formally renewed the charge and was examined. The petition was ordered to be brought on at the hearing of the case under sec. 211, but subsequently no orders were passed upon it. Bishoo Barik was convicted under sec. 211 of the Indian Penal Code.

The High Court held that under the circumstances of the case *the proper procedure was first to inquire into the charge of theft and passed some orders upon it before proceeding under sec. 211* to inquire into the offence of the false charge.

In the case of *Shaikh Abdulla v. R.*, (1931) 35 C. W. N. 1210, on the 29th July, 1930, Shaikh Abdulla, the petitioner, lodged an information before the Police making some allegations against certain persons. The ultimate result of the police investigation was that the case was reported to be false. Thereupon on the 26th August, 1930, the Magistrate directed the investigating officer to make a formal complaint against the above named petitioner under sec. 211, I.P. C. On the 1st September, 1930, a formal complaint was, accordingly made by the Police Officer and process was issued against the petitioner under sec. 211 and served on him on the 12th. On the 13th the petitioner filed an application before the Magistrate impugning the report of the Police and praying that process might be issued against the persons he had accused before. On these facts, the petitioner obtained a Rule

as to why the order of the Deputy Magistrate, dated the 1st September, 1930, summoning him under sec. 211, I. P. C., should not be set aside.

In making the above Rule absolute the High Court observed, "From what has been stated above, it would appear that the petitioner never knew, before he was actually served with the process under sec. 211, what the report of the Police on his information before them had been. The summons on him was served on the night of the 12th and by filing an application before the Magistrate on the next day, he impugned the police report. The learned Magistrate in his explanation has tried to meet this point by saying that this application was filed by the petitioner after process had been issued against him. But having regard to what happened to the Petitioner's information to the Police, the Petitioner had no opportunity of impugning the report submitted by the Police at any earlier date. It has been held that ordinarily a person ought to be given an opportunity to show cause before he is ordered to be prosecuted under sec. 211. In the present case, that opportunity the Petitioner had not before process was issued against him and if his attempt to take that opportunity came after the process had been issued against him, it was no fault on his part that he was late by one day."

"Having regard, therefore, to the facts of the present case, we are of opinion that this is a case in which we ought to interfere. We would, accordingly, make the Rule absolute and quash the proceedings that have been started against the Petitioner. We would desire to add, however, that if the authorities consider it necessary to take fresh proceedings against the Petitioner after giving him an opportunity to show cause, the order which we have passed in the present Rule will not operate as any bar to such proceedings."

302. In the case of *Akshoy Kumar Chakrabarty v., R.*, (1926) 31 C. W. N. 124, the petitioner, a postal peon addressed a complaint to the Police charging Bhujendra Nath Bhattacharjee with having committed assault and theft

of money and post-cards and envelopes. The Police reported to the Magistrate on the 13th July 1923, that the charges against Bhujendra were false. Under the provisions of sec. 173 (b) Cr. P. C., the petitioner was informed by the Sub-Inspector of Police on the 15th July 1925, that the petitioner's charges against Bhujendra Nath Bhattacharjee were false. On the 16th July, it appears, from the order-sheet, that *the petitioner was called upon to appear before the Magistrate on the 29th July to prove his case.* Instead of notice in terms of the order of the 16th July, a summons was issued against him as an accused to answer a charge under sec. 211, L. P. C. The petitioner did not appear before the Magistrate on the 29th July and the case against the petitioner was adjourned to the 13th August 1925. A second summons, again under sec. 211, was issued and the petitioner appeared and was tried and convicted under sec. 211, L. P. C.

The case coming up in its revisional jurisdiction the High Court observed, "We think having regard to the facts of this particular case the petitioner not having been afforded any *real opportunity* whatsoever to prove his case against Bhujendra Nath Bhattacharjee, he should not have been called on to stand his trial under sec. 211, L. P. C., without being given such opportunity. *The learned Magistrate was of opinion that the petitioner should be offered an opportunity to prove his case* against Bhujendra Nath Bhattacharjee and to that end he adjourned the matter from the 16th to the 29th July 1925. As it turned out, however, by reason of some mistake or otherwise this opportunity was not given to the petitioner and as stated above the petitioner was straight-way called upon to answer a charge under sec. 211, L. P. C., though there was no order that he should be summoned to answer a charge under sec. 211, L. P. C."

"On these facts we are of opinion that the conviction and sentence, under sec. 211, of the petitioner must be set aside. This order is made without any prejudice whatsoever to the adoption of any subsequent proceeding under sec. 211,

L. P. C., or any other section of the Indian Penal Code against the petitioner should it appear after he had been afforded an opportunity such as is hereinbefore referred to that his charges against Bhujendra Nath Bhattacharjee are false."

In some cases Magistrates, however, instead of waiting for a protest against the report, order the complainant to "prove his case." If the complainant is ordered to prove his case the proceeding, or such order though not authorised by the Code, is for the benefit of the informant and is not an irregularity which vitiates the issue of process against the accused.

The view taken by the Calcutta High Court regarding the necessity of the grant of time to the informant to prove his case has not been fully shared by the other High Courts in some cases.

303. In *R. v. Tayebulla*, (1916) L. L. R. 43 Cal. 1252; s. c.

Whether the informant should be called upon to prove his case.

20 C. W. N. 1265, one Tayebulla laid an information at the thana charging three persons with theft of paddy. The Police

reported the case to be false and that there was no evidence for false prosecution of the informant. On the receipt of this report the Sub-Divisional Officer passed an order in the following terms:—"Complainant to prove his case." The complainant did not apply to the Magistrate to investigate into the matter but Magistrate examined certain witnesses, and made the following order: "\* \* \* \* The complainant has totally failed to prove his case. I declare the case to be maliciously false and dismiss it under sec. 203. I sanction the prosecution of the complainant Tayebulla under sec. 211, L. P. C." The case was referred to the High Court by the Sessions Judge of Sylhet for setting aside the order of the Magistrate granting the sanction. The High Court observed, "In the case before us, the petitioner never applied to the Magistrate for investigation; he did not impugn the correctness of the police report nor did he pray that the person accused by him might be brought to trial. He was never examined on oath by the Magistrate; he cannot by any

stretch of language be deemed to have made a 'complaint' under sec. 4 (h), and it is difficult to understand what the Magistrate meant when he dismissed the case under sec. 203."

The High Court further held that *the procedure of calling the Complainant called upon to prove his case. on the informant who is reported by the Police to have made a false charge before them, to prove his case and the examination of witnesses is not contemplated by the Code and the proceeding is not a judicial one.*

304. In *Bhairab Chandra Barua v. R.*, (1919) 1 L. R. 46 Cal. 807; s. c. 23 C. W.N. 484, when an information to the Police was reported to be false, and the Senior Deputy Magistrate Mr. Majid, receiving the report ordered the informant to show cause against his prosecution under sec. 211 of the Indian Penal Code, and on showing cause made over the proceeding to a Subordinate Magistrate, Mr. Hollow *for disposal*, and the informant took no exception to this proceeding and on the other hand he produced witnesses to support the original charge before Mr. Hollow, who examined his witnesses and found the case to be false and submitted his report to Mr. Majid recommending the prosecution of the petitioner under sec. 211 of the Indian Penal Code. Mr. Majid, thereupon, issued process against the petitioner. The contention before the Hon'ble High Court was that the inquiry by Mr. Hollow held between the report of the Police and issue of process by Mr. Majid was not sanctioned by the Code and was *ultra vires*; and Mr. Majid had no jurisdiction to direct the issue of summons without an order of transferring the case to himself.

In delivering the judgement, Richardson, J., said, (p. 814), "Since *R. v. Sham Lal*, and in deference to the opinion expressed in that case, the procedure adopted in the present case has been commonly followed, and it is only recently that any exception has been taken to it. The position now is that if the person accused of having made a false charge is not afforded an opportunity of proving the charge, the Magistrate's proceedings are attacked on that ground.

on the authority of Full Bench case. If having been given such an opportunity, he fails to prove the charge and is then prosecuted, he complains that the Magistrate had no jurisdiction to call upon him to show cause."

"Different views may perhaps be held as to the propriety of calling upon an accused person to show cause why he should not be prosecuted for an offence. But clearly it was the opinion of the Full Bench, or at any rate of the majority of the Judges, who composed it, that in the special case of a charge made to the Police and reported by the Police to be false; the maker should have notice before being prosecuted under sec. 211. In giving such a notice the *Magistrate, though he may not be acting under any express provision of the Code, cannot be said to act without jurisdiction.* The maker may show cause or may refuse to show cause, but whichever course he adopts, having made the charge, he can hardly be heard to complain. Similarly, in proceedings under secs. 195 and 476 of the Code, a person could make no grievance out of the fact that before an order was made against him under either of these sections, he was given notice or was called upon to show cause why such an order should not be made."

The High Court remarked in this case that if the proceedings held in such cases upon an order to show cause are without jurisdiction, the result is merely that these proceedings are null and void. They do not affect the jurisdiction of the Magistrate who took cognizance of the case to summon the accused and proceed with the trial.

305. In *Maguni Padhan v. R.*, (1928) I. L. R. 7 Pat. 408, the Police reported that the information given by an informant in a certain cognizable case was false and made a complaint against that informant under sec. 211, I. P. C. The point before the High Court was whether before proceedings are taken under sec. 211, the person to be prosecuted against must be given a chance of showing cause. The High Court observed, "The Code nowhere requires that before proceedings are

Whether the Court is bound to call upon informant to show cause, before issuing summons.

taken under sec. 211, the person to be proceeded against must be given a chance of showing cause. As a matter of caution many decisions of the Courts have laid down that it is *wise to give an informant an opportunity of showing cause to prove that his case is true before he is prosecuted* and no doubt in many cases, if not in most, the Courts would exercise a wise discretion in giving a chance to an informant of explaining matters and showing that his case is true. In most cases if an informant is dissatisfied with the police investigation, he comes to the Court and asks that the case may be re-investigated or makes allegations against the Police. In that case the Court is bound to take his petition as a complaint and proceed accordingly. In the present case the informant, never made *any protest against* the manner in which the investigation was held by the Police and he waited until proceedings had been taken under sec. 211, before he came up. The question is whether it was necessary in this case for the Magistrate to call upon the informant Maguni to show cause. \*\*\*\* In the present case \*\*\*\* I think that there is no room for inquiring whether the Magistrate exercised a wise discretion in proceeding under sec. 211."

306. So in the case of *Mahadeo Singh v. R.*, (1900) 1 L. R. 27 Cal. 921, where a Magistrate after having examined the complainant and without hearing his witnesses or *dismissing the complaint* ordered the complainant to be prosecuted under sec. 211 I. P. C., it was held that the Magistrate's order was *without jurisdiction*.

307. When a *naraji* petition is filed it should be first disposed of according to law.

In *Gunamony Sapui v. R.*, (1899) 3 C. W. N. 758, the accused by a petition to the Joint-Magistrate impugned the correctness of the report of the Police who declared the information to be false. The Joint-Magistrate ordered an inquiry to be held by a Deputy Magistrate, who after inquiry reported the case to be false. The Joint-Magistrate never put an end to the complaint by

Where original  
complaint remains  
undisposed of.

*dismissing it under sec. 203, or passing such other order as he might think fit on the receipt of the report of the Deputy Magistrate but directed the issue of summons against the petitioner under sec. 211 I. P. C.*

The High Court held that the proceeding must be quashed and no further proceedings can be taken until final orders passed on the petition. It was held in this case that so long as a complaint is not (1) dismissed under sec. 203 of the Code of Criminal Procedure, or (2) otherwise judicially determined, no proceedings can be instituted under sec. 211 of the Indian Penal Code, against the persons lodging that complaint. The original complaint must first be disposed of according to law before such proceedings can be taken.

308. In *Gatt Mandal v. R.*, (1905) 4 Cal. L. J. 88, the petitioner filed a petition of complaint to the Sub-Divisional Officer and applied for issue of process against the accused persons. The Sub-Divisional Magistrate directed a Sub-Deputy Magistrate to inquire and report. The Sub-Deputy Magistrate reported that the case was a true one but it might be dismissed "on insufficiency of evidence". Thereupon, the Sub-Divisional Magistrate directed the prosecution of the petitioner under sec. 182 I. P. C., on the 27th October 1904; and *thereafter* on the 14th November, 1904, dismissed the petitioner's complaint. The High Court, having regard to the ruling of *Gunamony Sapui*, (*ibid*), held that the Magistrate had no jurisdiction to order a prosecution for making a false complaint till that complaint had been finally determined.

309. In *Sahiram Agarwalla and Jibun Kumar*, Petitioners, (1900) 5 C. W. N. 254, an information was given before the Police by one Jibun, a servant of Sahiram, that the house of Sahiram was set fire to by two persons. The Police reported the case to be false. Upon that, a notice was issued against the petitioners to show cause why they should not be prosecuted under sec. 211 I. P. C. Thereupon, the petitioners, *in showing cause, asked for an inquiry into their complaint*. It was

Complaint by way of naraji petition submitted after notice to show cause must be disposed of.



held by the High Court that a *prosecution* for bringing a false complaint is not *entertainable* until and unless that complaint is judicially determined.

310. As the complaint must be judicially determined before proceedings can be taken under sec. 211 I. P. C., it is necessary to see what such a determination is and what are the requirements of the law in respect of such a determination of the complaint.

311. "Judicial determination" of a complaint does not mean the trial of the person against whom the complaint is made but the *final determination of the matter of the complaint* by the officer *holding the inquiry*, upon evidence produced before him. See 5 C. W. N. 254, 255.

312. So, in *Jogendra Nath Mookerjee v. R.*, (1905) L. L. R. 33 Cal. 1, where one *J* laid a charge at the thana against two persons, under sec. 436 of the Indian Penal Code, which the Police after investigation, reported as false. *J* thereupon filed a petition before the Sub-Divisional Magistrate impugning the correctness of the police report, and praying that the persons accused by him might be brought to trial. *The Magistrate did not examine the complainant*, but ordered the petition to be "put up with the police report;" and on the next day required him to show cause why he should not be prosecuted under sec. 211 of the Penal Code. He afterwards referred the case for inquiry and report to the Sub-Deputy Magistrate with second class powers who, after examining the complainant and his witnesses, reported the charge to be maliciously false. The Sub-Divisional Magistrate then heard *J*'s Pleaders and agreeing with the reports passed an order directing his prosecution. It was held that the petition to the Sub-Divisional Magistrate was a "complaint" within the meaning of sec. 4 (a) of the Criminal Procedure Code. It was further held that, according to the current of decisions of the Court, when a person institutes before the Police criminal proceedings,

found on inquiry to be false, before he can be prosecuted under sec. 211 of the Penal Code, he must first have an opportunity of proving his case; that, if he impugns the correctness of the police inquiry by a petition, he is entitled to have the persons complained against tried on the charge, or else his statement must be recorded on oath and his complaint dismissed under sec. 203 of the Code of Criminal Procedure and that the order of the Magistrate in the case was, therefore, bad.

313. A somewhat different view was taken in *Gangadhar Pradhan's case*, (1915) I. L. R. 43 Cal. 173 : s. c. 20 C. W. N. 63, Gangadhar Pradhan on the 24th December 1914, laid an information at the thana, alleging that he was informed that a burglary had been committed in his house, and he suspected certain persons named by him. On the 30th December, the Police reported to the Sub-Divisional Officer that the case was maliciously false, and recommending the prosecution of the informant under sec. 182 and 211 of the Indian Penal Code. Thereupon, the Sub-Divisional Magistrate called for a further report from the Police on the question of the petitioner's motive, and the same was sent in on the 21st January 1915, confirming the previous report. On the latter date the petitioner filed a petition before the Magistrate impugning the correctness of the police reports and praying for judicial inquiry and subsequent trial of the suspects. The Magistrate, thereupon, *without examining the petitioner*, sent the case to a Sub-Deputy Magistrate "for inquiry and report" with an observation that "after considering the police reports and other evidence adduced in Court, if he agrees in the view taken by the Police, he may submit a proceeding under sec. 476 to this Court for the prosecution of the complainant under section. 211 I. P. C."

The Sub-Deputy Magistrate examined the petitioner and his witnesses in Court, held a local investigation, and thereafter drew up a proceeding under sec. 476 of the Criminal Procedure Code against Gangadhar Pradhan and submitted it

to the Sub-Divisional Officer with a report that the case was false. On receipt of the record, the latter, *without formally dismissing the petition* of the 21st January, tried Gangadhar Pradhan under secs. 182 and 211 of the Indian Penal Code. The trial ended in conviction. An appeal against the order of conviction was dismissed by the Sessions Judge and the petitioner (Gangadhar Pradhan) moved the 'Hon'ble High Court in its revisional jurisdiction.

The High Court remarked, "The Sub-Divisional Magistrate would have exercised a *better discretion* if he had acted in the manner which we have indicated above. *But it is a matter of discretion not of statutory provision. There is no statutory provision requiring that such a petition shall be finally disposed of as a complaint before the prosecution under sec. 211 commences.* Now after conviction a breach even of a statutory provision can be remedied by the application of sec. 537 of the Criminal Procedure Code which says that, subject to the provisions of the Code no sentence shall be reversed on revision on account of any error, omission or irregularity in the proceedings before trial, unless a failure of justice has *in fact* been occasioned. The words "in fact" have at the last amendment been added to the section to emphasize the reality of this requirement. We are quite unable to say that any failure of justice has in fact been occasioned in the present case." The rule was accordingly discharged.

314. It may be pointed out here that in *Jogendra Nath Mookerjee's* case and in *Gangadhar Pradhan's* case suggestions have been thrown by the learned Judges that when the complainant without being heard indicted for offences under secs. 182 or 211 I. P. C., he would get an opportunity to prove his case by producing evidence when he is on his defence. But in *Rusick Lal Mullick's* case (see below), it has been rightly observed that as an accused person, in such circumstances is precluded from giving his own evidence. It is virtually allowing the prosecution to reverse the whole course of the proceedings and after such an inquiry, as

the prosecution may have thought proper to make to shut the complainant's mouth,\* and place him in the position of an accused person, without giving him an opportunity of making good his charge.

315. *In the matter of Russick Lal Mullick*, (1880) 7 Cal. L. R., 382, the petitioner charged four persons with theft, and the Police, after investigating the charge, pronounced it false. On receipt of the report the Assistant Commissioner ordered the petitioner to be prosecuted under sec. 182 L.P.C., simply on the perusal of the report. The petitioner applied to the Assistant Commissioner for further inquiry and for taking of evidence. Upon this the Assistant Commissioner, without allowing the petitioner an opportunity of substantiating the charge made by him, ordered the Police to adduce evidence for the purpose of prosecuting the petitioner under sec. 182 I. P. C. The High Court observed, "There may be cases in which such a course is justifiable; as for instance, when the Police find that property said to have been stolen has not left the complainant's possession, or where a person said to have been wounded or killed is found to be unhurt; but to order a prosecution on a police report is often very unfair to the complainant, who may be able, and may wish to prove that the investigation has been imperfect or even improper. ..

"\* \* \* \* The petitioner cannot be said to have had a fair chance. He was precluded from giving his own evidence, and it would have been surprising if the witnesses whom he called for his defence had shaken the Assistant Commissioner's opinion already formed." \* \* \* \* To act merely upon the report of the Police, as the Magistrate has done in this instance, and upon the strength of that report to turn the tables upon the complainant, and to put him upon defence for making a false charge without hearing first what he and his witnesses have to say, is extremely unfair. It is virtually allowing the Police to reverse the whole course of the proceedings, and after such an inquiry as they (the Police) may

have thought proper to make to shut the complainant's mouth and place him in the position of an accused person, without giving him an opportunity of making good his charge."

316. In *Parmanand Brahmachari v. R.*, (1927) 116 L. C.

A different view  
taken by the Patna  
High Court.

46 : s. c. 30 Cr. L. J. 554, a different view has been taken by the Patna High Court. In this case, the petitioner under trial, lodged an information on the 29th May, to the Sub-Inspector of Police who on the 7th June reported the case to be false to the Sub-Divisional Magistrate and preferred a complaint against the petitioner under sec. 211 L. P. C. The Magistrate gave the petitioner an opportunity to show cause, why he should not be prosecuted and to prove his case. The petitioner on the 27th June filed a petition showing cause and impugning the correctness of the police report and on the 21st of July examined a witness. Subsequently on the 27th July the petitioner put in a petition dealing with points of law but also asking that what he called his complaint be finally disposed of before process was ordered to be issued on him on the complaint of the Sub-Inspector. On the 21st July the Magistrate who was apparently inclined to summon the accused since he remarked that the Police had much evidence against him, took time to peruse the police record and eventually passed order on the 18th August summoning the petitioner under sec. 211.

The petitioner (accused) moved the High Court to quash the proceedings and prayed that he might be given an opportunity to prove his case. The High Court rejected the application observing that "in the present case there is manifestly nothing in sec. 195 (1), to prevent the Sub-Inspector of Police from preferring a complaint of an offence under sec. 211 against the petitioner. Equally there was nothing to prevent the Court from taking cognizance of the complaint. Taking cognizance occurs as soon as the Magistrate as such applies his mind to the suspected commission of an offence. [*Sourindra Mohan Chuckerbutty v. R.*, (1910) 1 L. R. 37

Cal. 412 : s. c. 14 C. W. N. 512]. In the present instance the Magistrate took cognizance either before or at least as soon as he issued notice upon the petitioner. \* \* \* \* When, therefore, the petitioner filed his petition on the 27th June impugning the police investigation, the Magistrate had already taken cognizance on complaint of the offence alleged against the petitioner, and, therefore, sec. 195 (1) (b) could not possibly apply. \* \* \* \* In the present instance, such cognizance had already been taken before the accused took any action which can, even by implication, be adjudged to be a complaint, and it is impossible to hold that when a Magistrate has taken cognizance of a complaint anything that can subsequently happen will suffice or anything in sec. 195 (1) (b) can *operate* to deprive him of jurisdiction proceed thereon in accordance with law. Clearly the Magistrate had jurisdiction to issue summons on the petitioner. \* \* \* \* In the present instance the Magistrate was satisfied upon the material placed before him by the prosecution of the truth of the complaint inspite of the submissions and evidence adduced by the accused and was, therefore, warranted in issuing process, even though accused may have had further evidence which he could adduce. \* \* \* \* When there are competing complaints it is manifestly within the discretion of the Magistrate on a consideration of the circumstances of the particular case to determine in which he should issue process first and not less so when he has made an inquiry under sec. 202 in one of them which necessarily involves also a consideration of the other."

The above case was followed in *Gonour Singh v. R.*, (1930) 127 L. C. 287 : s. c. 31 Cr. L. J. 1200 (Pat).

With due deference to the opinion of the Judges who decided the above cases it is submitted that when the *naraji* petition was filed and accepted by the Court, the offence under sec. 211 came to be related to the proceeding in Court and the Court should have complained. [See *Gunamony Sapui v. R.*, (1899) 3 C. W. N. 758, *ante* ¶ 307; *Mahadeo Singh v. R.*, (1900) 1 L. R. 27 Cal. 921, *post* ¶ 325; *Russick Lal*

*Mullick*, (1880) 7 C. L. R. 382, ante ¶¶ 296, 315; *In re Ningappa Rayappa*, (1924) I. L. R. 48 Bom : 360].

In *Parmanand Brahmachari's* case (30 Cr. L. J. 554, see p.230), the complainant was not examined, which was an illegality and the police paper on which the Magistrate relied on is not evidence and that it was improper on the part of the Magistrate to keep the case of the informant pending and at the same time prosecuting him. In this case it does not appear whether any notice was given to the informant under sec. 173 Cr. P. C., and the Court has not found that the petition of the informant on the 27th June was a *mala fide* and a belated one.

It may be stated here that the case of *Parmanand Brahmachari* has been followed in *Kantir Misser v. R.*, (1929) 30 Cr. L. J. 710, (Pat), and it has been held therein that where a Magistrate has once taken cognizance of a complaint, nothing that can subsequently happen will suffice and nothing in sec. 195 (1) (b) Cr. P. C., can operate to deprive him of jurisdiction to proceed thereon in accordance with law.

317. According to the Calcutta High Court the principle

According to Calcutta High Court the principle of disposing of the *naraji* petition equally applies to ss. 182 and 211 I. P. C.

of disposing of the complaint first which applies to *naraji* petition relating to sec. 211, equally applies to *naraji* petition relating to sec. 182 I. P. C.

In *Munshi Isser v. R.*, (1910) 14 C.W.N. 765, the petitioner, Munshi Isser, laid an information to the Police alleging that certain persons had formed an unlawful assembly and had assaulted him and another person. The Police commenced investigation but the petitioner being dissatisfied with the manner of investigation complained to the Magistrate against the method of investigation. The Police then reported that the information was false, and the Inspector of Police purporting to act under sec. 195 of the Code of Criminal Procedure, granted sanction to prosecute the petitioner under sec. 182 I. P. C., and another for abetment. Thereupon, the petitioners put in a further petition to the Magistrate asking him to take evidence in support of their case. But this petition was rejected by the Magistrate

on the ground that as the Inspector of Police had granted sanction for their prosecution, he (the Magistrate) must take cognizance of the offence for which sanction had been accorded. Against this order the petitioner moved the High Court. The High Court applied the principle enunciated in *R. v. Sham Lall* (1887) L. L. R. 14 Cal. 707, and observed, "The petitioners had asked the Magistrate to take their evidence and to investigate their complaint before going on with proceedings against them under sec. 182, I. P. C. In our opinion they had a right to have their case investigated and the truth or falsity of the charge determined in a proper tribunal. The Magistrate had no sort of business to refuse to take their evidence. \* \* \* But in any case the Magistrate had no business to refuse to determine the truth of the charge made by the petitioners. The order, therefore, must be set aside and the petitioners are given an opportunity of proving their case before any proceedings are taken against them under sec. 182 read with sec. 109, I. P. C.

In the case of *R. v. Babar Ali Biswas*, (1930) 35 C. W. N. 378 : s. c. L. L. R. 58 Cal. 1065, Babar Ali lodged information at the thana in which he stated that certain articles belonging to his master, the zemindar, had been stolen and that he suspected certain *patik* of his as having been concerned in the theft. The Police after investigation, came to the conclusion that the information was false and that really it was the petitioner himself who was concerned in the theft ; and on the complaint of the Sub-Inspector of Police, summons was issued against the petitioner under sec. 182, I. P. C., for appearance on the 24th March, 1930. On that date, Babar Ali, the accused petitioner, appeared and filed a petition definitely alleging that the Police had not held any proper investigation and had not examined any witnesses on the petitioner's side and had reported his case to be false on account of their being dissatisfied with him for some reason or other and he prayed that his witnesses might be examined by the Magistrate and a local investigation might be held, if necessary. The Magistrate who then had the



cognizance of the case, refused his petition, pointing out that the petitioner might prove his case while adducing the defence evidence at the trial. The Magistrate then proceeded to hear the case under sec. 182, I. P. C., and convicted the petitioner. The petitioner then moved the learned Sessions Judge who referred the case to the High Court, recommending that the order convicting the petitioner should be set aside on two grounds: first of all, the petition, dated the 24th March, 1930, filed by the present petitioner before the Magistrate, praying for a judicial inquiry in this case, amounted to a petition of complaint and the learned Magistrate was wrong in not taking proper cognizance of it and disposing of it in accordance with law, and, secondly, that although the learned Magistrate had jurisdiction to prosecute the accused petitioner under sec. 182, I. P. C., on the complaint of the Police Officer who had submitted a final report, declaring the petitioner's case to be false, the Magistrate failed to exercise a sound judicial discretion in summoning the petitioner straight away on the complaint of the Police, without giving the petitioner an opportunity to prove his case. Cuming, J., sitting singly, observed, "Now, it is quite clear that the learned Sessions Judge's contentions have no basis whatever in the law that will be found in the Indian Penal Code. Neither the Indian Penal Code nor the Criminal Procedure Code provides that before a Magistrate can inquire into a case under sec. 182, I. P. C., on the complaint of a Police Officer, the accused person must have an opportunity of proving his case. There is no such provision in the law. Nor do I think such a provision is necessary, for it is perfectly clear that the accused person in such a case would have an ample opportunity of proving it when he would be called on to enter upon his defence. Obviously, it would be a waste of time to allow the accused person to prove his case before he is called on to answer a charge under sec. 182, I. P. C. That would be to go through the same operation twice. I am prepared to say that it cannot be said for one moment that the Magistrate, in refusing to hold

such an inquiry and in summoning the petitioner straight away on the complaint of the Police Officer, has not exercised a sound discretion. I am equally prepared to say that, even though the Magistrate has not exercised a sound judicial discretion, that would not be an error of law. At the highest, it might be an error of discretion, and an error of discretion, to my mind, is not an error of law. The Code does not provide for any such inquiry or any such opportunity being given to the accused person. I always prefer the Code and I also find it safer to be guided by the provisions of the Code and not by the idiosyncrasies of individual Judges."

"The learned Judge has relied upon two decisions of this Court in support of the view which he asked this Court to take. One is the case of *R. v. Sham Lal*, I. L. R. 14 Cal. 707, a decision of the Full Bench. If I understand this decision rightly, what the Full Bench would seem to lay down is that the Magistrate should not take cognizance of an alleged offence under secs. 191 and 192, Cr. P. C., until the alleged offender has had an opportunity of supporting the original charge or abandoning it in due course of law. That is not the same as to say that if the Magistrate does not do so and the accused person is convicted that conviction is illegal. With the greatest respect, I would regard the decision in the case of *R. v. Sham Lal*, as merely laying down what at the highest are really pious hopes. The other decision to which I have been referred is the case of *Munshi Isser v. R.*, (1910) 14 C. W. N. 765. That case does not, of course, lay down the proposition that if a person is convicted under section 182, I. P. C., without being allowed a preliminary opportunity of showing that his case is true, that the conviction under sec. 182 is bad in law. What the learned Judges there remark is as follows: "In our opinion they had a right to have their case investigated and the truth or falsity of the charge determined in a proper tribunal." With that proposition I entirely agree. Surely the accused persons have a right to

have their cases investigated and the truth or falsity of the charges determined in a proper tribunal. "It hardly required a decision of this Court to decide this somewhat elementary proposition. This was done in the present case, because the case was heard judicially by the Magistrate and the accused was convicted. It cannot, therefore, be said for one moment that the Magistrate has refused to take his evidence. As far as I can see, what the case of *Munshi Isser v. R.*, lays down is that the Magistrate must not refuse to take evidence of the accused person, with which proposition I entirely agree. In the present case, as I have already pointed out, the evidence adduced on behalf of the accused person was taken. Neither of these decisions lays down the proposition that a conviction under sec. 182, I. P. C., is bad in law, because the *accused has been given no opportunity of showing whether his case is true or false before he is put on his trial*. I am prepared to say that, in view of the express provisions of law, it would be very difficult for any Court to lay down any such proposition."

But in the case of *Lachmi Shaw v. R.*, (1931) 36 C. W. N. 15, a different view was taken. In that case Lachmi lodged an information against one Babaji Naik charging him with theft. The Police inquired into the matter and submitted their report. Thereupon Lachmi filed a *naraji* petition before *the Magistrate who sent the matter to an Honorary Magistrate for inquiry and report*; and the Honorary Magistrate submitted his report. Thereupon the Magistrate without dismissing the *naraji* petition issued process against Lachmi under secs. 211 and 182 of the Penal Code. It was held by Mallik and Patterson, JJ., that the issuing of process under secs. 182 and 211 of the Penal Code without dismissing the *naraji* petition which was to be treated as a complaint was illegal, and consequently the High Court set aside the order summoning Lachmi under secs. 182 and 211, I. P. C.

318. In the case of *Sarba Mablon v. R.*, (1913) 17 C. W. N.

824, the petitioner lodged an information with the Police, who reported the case to be false and asked for the prosecution of the petitioner. *The petitioner made no complaint in Court.* The case came up before the Sub-Divisional Magistrate, who passed the following order: "The complainant to prove his case," and sent the police report to the second officer for disposal after calling upon the petitioner to prove his case. The petitioner in compliance with a notice served on him to prove his case examined himself and four witnesses before the second officer in support of his case and the Police also examined some witnesses. *The petitioner did not file any petition either before the Sub-Divisional Magistrate or the second officer impugning the correctness of the police report.*

The second officer was transferred before the completion of the inquiry. The Sub-Divisional Magistrate withdrew the case to his file, but again made it over to the successor in office of the second officer for disposal, who after examining the rest of the witnesses declared, on perusing the whole evidence, that the case was false and directed under sec. 476 Cr. P. C., the prosecution of the petitioner under sec. 211 of the Penal Code.

The case coming up before the High Court, Cox and Chatterjea, JJ., held that the proceedings do not come within any of the provisions of the Criminal Procedure Code. For the offence was not committed before the Magistrate who made the order, nor did it come to his notice in the course of a judicial proceeding. "They do not come within the sec. 202 as there was *no complaint*: nor do they come under sec. 159 as they were taken on a final report and not on a first information report." The rule was made absolute on the ground that the order for the prosecution was made, without jurisdiction. At the same time the High Court left it open to the Police Officer with whom the information was lodged to prefer any complaint under sec. 195 Cr. P. C., which he might be advised to make.

319. Magistrates as mentioned in sec. 190 Cr. P. C., may take cognizance of an offence under sec. 211 I. P. C., upon a report in writing of such facts made by a Police Officer.

320. It would not be out of place to state that when there are conflicting decisions of different High-Courts on the same subject the subordinate Courts are bound to take the law as it is laid down by the High Court to which they are subordinate and should not follow the ruling of a different High Court to which they are not subordinate. See *Adikkhan v. Alagan*, (1897) I. L. R. 21 Mad. 237, 239.

Which High Court to follow in conflicting rulings.

The Allahabad High Court in the case of *Ahmad Ali v. R.*, 1930 Cr. Cases, 1227 : s. c. A. L. R. 1930 Lah. 1051, it was also pointed out that "If there is a conflict of judicial opinions on a particular point, *the Courts are bound to follow the decisions, if any, of the local High Court. In the absence of any pronouncement by the said High Court, it is the duty of the Courts to study the law as laid down at least by two other High Courts for the purpose of coming to a proper decision.*" It was also pointed out in this case that "it is very undesirable to reject a plea simply because there is no ruling on it by the local High Court."

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## CHAPTER XII.

### Propriety of complaints by Court without inquiry or on irregular inquiry.—Procedure.

321. We shall consider the question if it is proper to make a complaint for a false case without any regular inquiry having been made by the Court or the public officer into the truth of the original offence. It should be remembered as the Court in such prosecutions is to figure as a complaint, it is clear that where no inquiry has been made into the truth or falsity of the charge, the Court has nothing to go upon, and so is not justified in complaining against the complainant. [See *Zain-Ul-Abdin v. Nawab Din*, (1908) 9 Cr. L. J. 152, (Punj)].

A person may come to the Court complaining that an offence has been committed just before or after lodging an information to the Police, or he may come before the Court by filing a *naraji* petition impugning the correctness of the police-report and praying for inquiry into his case.

The Criminal Procedure Code gives a detailed procedure as to the disposal of complaints made to Magistrates. When a proper complaint is filed before a Magistrate he "may" take cognizance of the offence.

322. It is most desirable that Magistrates should follow the procedure which is clearly laid down in Chapter XVI of the Code of Criminal Procedure, dealing with complaints to Magistrates. "The Magistrate is directed by the statute to inquire into the case in certain specified ways, and then having investigated the matter in one or other of the specified ways, he is to decide whether process ought to issue, and then if he thinks that process ought to issue, he should direct process to issue." [See *Balai Lal Mukerjee v. Pasupati Chatterjee*, (1916) 21 C. W. N. 127].

323. Such being the case the question is if a Court without following the legal procedure dismisses the complaint, will such a dismissal affect the Magistrate's complaint for prosecuting the complainant under sec. 211. I. P. C.

324. Where a complaint for a criminal offence is dismissed by the Magistrate without examining the complainant as required by sec. 200 of the Cr. P. C., it is not permissible to the Magistrate to complain for the prosecution of the complainant under secs. 182 and 211 of the Indian Penal Code. If the complaint is not dismissed according to law, then the complainant cannot be convicted of bringing a false charge. *In re Ningappa Rayappa*, (1924) I. L. R. 48 Bom. 360, 362 s. c. 81 I. C. 608, 25 Cr. L. J. 960.

325. In *Mahadeo Singh v. R.*, (1900) I. L. R. 27 Cal. 921, it was held that a complainant must be examined by the Magistrate, who received the complaint, or by some Magistrate to whom he has transferred the case. When a complainant has been examined he is entitled to have the person accused brought before the Magistrate, and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can properly be refused. It was further held in this case that where a Magistrate after having examined the complainant and without hearing his witnesses or dismissing the complaint ordered the complainant to be prosecuted under sec. 211 of the Penal Code, such order is without jurisdiction.

326. In *R. v. Raffi Raut*, (1914) 19 C. W. N. 127, the petitioners filed an application before the Sub-Divisional Magistrate praying for proceedings under secs. 144 and 107, Cr. P. C., against several servants of a certain factory, whereupon the Magistrate called for a report from the Manager of the factory, and on receipt thereof required the petitioners to show cause against prosecution under sec. 182 I. P. C., and then after examining some witnesses on each side, but

without examining the petitioners themselves, made an order under sec. 476 Cr. P. C., directing their prosecution under sec. 182 I. P. C. The High Court set aside the order for prosecution and ordered that further inquiry should be made into the truth of the petitioners' complaint, and they themselves should be examined if they choose to give evidence.

327. When a Court takes cognizance of a case on a complaint but the complainant is not examined at the first stage but is examined afterwards in the presence of the accused, the omission is merely an irregularity not going to the root of the Court's jurisdiction. It cannot be said that he is 'condemned unheard. In such cases the proceedings are not liable to be set aside unless there is prejudice proved by such omission. See *R v. Monu*, (1888) 1. L. R. 11 Mad. 443.

328. A Magistrate can order an inquiry under sec. 202 Cr. P. C., only after he has examined the complainant on oath.

Where a complaint was made to a Magistrate who, *without examining the complainant*, sent the petition of complaint under sec. 156 of the Code of Criminal Procedure, to the Police for inquiry, and upon the receipt of the police report directed a Sub-Deputy Magistrate to make a preliminary inquiry into the case under sec. 159 of the Code, and on receipt of his report the Magistrate, not being satisfied with it, cross-examined the complainant and some of his witnesses, examined some witnesses sent up by the Police, and then dismissed the complaint under sec. 203 of the Code, and directed the prosecution of the complainant under sec. 211 of the Penal Code. The High Court held that the order dismissing the complaint was illegal, the Magistrate having no jurisdiction to deal with the case or dismiss it under sec. 203 of the Criminal Procedure Code without complying with the requirements of the law as laid down in sections 200.



and 202 of that Code. *Lokenath Patra v. Sanyasi Charan Manna*, (1903) 1 L. R. 30 Cal. 923.

329. In *Budh Nath Mahato v. R.*, (1899) 4 C. W. N. 305, one *B* accused *E* before the Police for committing mischief by fire. The Police, on investigation, reported the case to be false. The Deputy Commissioner of Palamau, on receipt of the police report, called upon *B* to show cause against his prosecution. *B* then appeared before him and complained of the unfairness of the police investigation and asked the Magistrate to examine him and his witnesses with reference to the charge made. The Deputy Commissioner never examined *B* the petitioner, but at once made over the case to a Magistrate with second-class powers for inquiry. On the latter's reporting the case to be false, the Deputy Commissioner who being the District Magistrate ordered *B* to be prosecuted. *B* then moved the High Court for revoking the order on the ground that there was no judicial investigation into the truth or otherwise of the complaint in accordance with law, and also upon the ground that the said complaint had not yet been finally disposed of. The High Court observed, "*We cannot regard this as an inquiry ordered under sec. 202 ; for the petitioner, if he be regarded as a complainant and in one view of the case he is certainly entitled to be so regarded — has never been examined by the District Magistrate and he can fairly say that if the District Magistrate who was alone competent to deal with this matter had heard him, he would not have ordered an inquiry under sec. 202 on the ground that he was not satisfied with the truth of the complaint so made.*"

330 In this connection it will be noticed that before the amendment of sec. 202 by the Act XVIII of 1923,

the inquiry was to be held only by the Magistrate who took cognizance or the *local investigation* was to be made by a Subordinate Magistrate or by a Police Officer or some other person as the Magistrate thought fit. It did not permit accused to be

In a petition case the accused (complainant) must be examined.

sent to another Magistrate for inquiry and report. The present amendment now empowers a Subordinate Magistrate to hold an inquiry. Therefore, the class of reported cases in which Magistrates sent cases for inquiry and report and on that report the inquiry and the consequent proceedings were held bad, is no longer law.

331. The Punjab Chief Court in the case of *Ali Muhammad v. R.*, (1911) 12 I. C. 515: s. c. 12 Cr. L. J. 539, following *Mahadeo Singh's* case, (L. L. R. 27 Cal. 921), and *Budh Nath's* case (4 C. W. N. 305), held that unless a complainant is duly examined, an inquiry and report under sec. 202, Cr. P. C., cannot be called for and if made, are made without jurisdiction and cannot form the basis of any further action. A complainant cannot be prosecuted under sec. 211 in respect of a complaint, in which he has not been duly examined, though the complaint has been dismissed upon inquiry and report ostensibly called for under sec. 202, Cr. P. C.

Following the case of *Haladhar Bhumi v. Sub-Inspector of Police*, (1904) 9 C. W. N. 199: s. c. 2 Cr. L. J. 51, and *Lokenath Patra v. Sanyasi Charan Manna*, (1905) 1 L. L. R. 30 Cal. 925, it was further held in this case that a complainant should be examined specifically in respect of his complaint and in the absence of any such examination, his complaint cannot, in law, be dismissed.

Because, a reference to sec. 202 will show that the section applies before the inquiry is made, and such inquiry cannot be made after evidence has been taken for the complainant and process issued. See the cases of *Sadagopacharyar v. Ragavacharyar*, (1886) 1 L. L. R. 9 Mad. 282, and *Ramkant Sircar v. Jadub Chunder Dass Byrager*, (1874) 21 W. R. Cr. 44.

If an inquiry has regularly commenced by the examination of the witnesses for the prosecution and the Magistrate vacates the office, his successor cannot order a police investigation.

332. There is nothing in the Code of Criminal Procedure which compels the Magistrate in express terms to examine

any or all witnesses whom the complainant wishes to adduce, before dismissing a complaint and making a complaint under sec. 211, against the accuser. It may be contrary to justice to do so, but whether it is so or not must depend on the circumstances of each case. See *In re Rachappa Tippanna*, (1910) 12 Bom. L. R. 229: s.c. 5 I. C. 971: 11 Cr. L. J. 338.

A Magistrate cannot refuse to take evidence on the presumption that there will not be sufficient evidence on behalf of complainant if offered.

A different consideration arises when the complainant avoids

When the complainant avoids the witness-box.

the witness-box after making a false complaint.

Such was the case in *Fazlar Rahman v. R.*, (1930) 31 Cr. L. J. 1055, (Cal). Therein it was pointed out by the High Court that "if the Magistrate is satisfied that *prima facie* there is a case against the accused or has reason to suspect that an offence has been committed he has power to proceed under sec. 252, Cr. P. C., but if on the date of hearing he has reason to suspect that the case is a false one and that there is no reasonable ground of suspecting that an offence has been committed, he has the right to proceed under sec. 253 which is couched in wide terms. That section makes it clear that if a Magistrate after taking evidence under sec. 252 finds that no case has been made out he may discharge the accused, and it further says that nothing in that section (*i. e.*, taking of the evidence under sec. 252 and making such examination of the accused and finding that no case has been made out against the accused), shall be deemed to prevent the Magistrate from discharging the accused at any previous stage of the case if for reasons to be recorded by such Magistrate he considers the charge to be groundless. Under cl. (1) the Magistrate may discharge the accused if after recording the evidence for the prosecution he finds that no case has been made out against him. Under cl. (2) he may discharge the accused at any stage even before recording any evidence if he considers the charge to be groundless. The wording of the section is so plain that it is hardly necessary to cite any

authority for the view thus expressed. But it has been so held in *Govinda Dass v. Dulall Dass*, (1883) I. L. R. 10 Cal. 67, where the learned Judges say : 'Having regard to the terms of sec. 259, we are of opinion that *in warrant cases not coming within that section except under the last clause of sec. 253, which is not applicable, a Magistrate is not competent to pass an order of dismissal or discharge in consequence of the absence of the complainant.*'

"It is further remarked that a Magistrate can pass an order of dismissal or discharge an accused in consequence of the absence of the complainant under cl. (1), sec. 253.

"Our attention was also drawn to a recent decision of the Madras High Court in *Mahomed Sheriff Sahib v. Abdul Karim Sahib*, (1928) I. L. R. 51 Mad. 185. In that case the Magistrate had discharged the accused and refused to examine all the witnesses cited by the complainant holding that no case had been made out against him. It was held that the Magistrate could not hold that no case had been made out against the accused without examining all the witnesses for the prosecution : and that if he purported to discharge the accused under the last clause of sec. 253 he did not in his order say that the charge was groundless which was a different thing from saying that a case had not been made out. It is further observed there that where a complaint *prima facie* discloses an offence a Magistrate cannot hold the charge to be groundless unless he knows what is the sort of evidence that is going to be adduced to prove it. The rule that can be deduced from this case is that where the Magistrate proceeds to take evidence he must take the whole of the evidence before holding that no case has been made out against the accused. I do not quarrel with this view but I hold that he can discharge the accused at any stage before recording any evidence or if in the course of recording evidence he is of opinion that the charge is groundless."

333. In *Mewa Lal v. R.*, (1920) 18 A. L. J. 620 : s. c. 21

Cr. L. J. 416: 56 I. C. 64, (All), Mewa Lal, the applicant, made a complaint against an Officer of Police alleging that in the course of the search he used threatening and abusive language towards him and his wife. The Magistrate sent the complaint for inquiry to another Police Officer, who reported it to be groundless. The Magistrate dismissed the complaint and called upon the applicant to show cause why he should not be prosecuted under sec. 211. He showed cause. The High Court set aside the order. The grounds being that, the accused person was a Police Officer, the investigation has been made by another Police Officer and the offence was not a cognizable one. Tudball, J., said, "I do not think the Magistrate has acted wisely in directing an investigation by a Police Officer in such a case. The inquiry ought, in my opinion, to have been made either by the Magistrate himself or by some other Magistrate on his behalf."

334. In the case of *Solaimuthu Pillai v. Murugaiif Moopan*, (1915) 28 I. C. 999: s.c. 16 Cr. L. J. 423 (Mad), one of the charges against the accused was under sec. 182 I. P. C. With regard to it, the High Court said, "The complainant stated 'I have witnesses to prove that the case is false.' The Sub-Magistrate to whom the complaint was referred for investigation under sec. 202, appears to have examined no witnesses. Then the Sub-Divisional Magistrate observes: 'From the records I do not consider that there will be satisfactory evidence that he deliberately gave false information to the Police.' This is mere speculation as to the evidence that might be forthcoming at the trial. I think the Magistrate ought to have given the complainant an opportunity of proving his complaint."

335. It is an imperative provision of law that a Magistrate shall briefly record his reason for dismissing a complaint. There is no question of irregularity where an imperative provision of the statute is directly disobeyed.

Where a Magistrate did not record any reason for dismissing a complaint but directed that a complainant should be prosecuted under sec. 211 I. P. C., it was held in *Maniruddin Sircar v. Abdul Rauf*, (1912) I. L. R. 40 Cal. 41 : s. c. 13 Cr. L. J. 482, that the order of dismissal was without jurisdiction and altogether bad, that there must be a further inquiry and that there cannot be any proceeding under sec. 211, I. P. C., until such further inquiry has been made.

336. In *Sheikh Kutab Ali v. R.*, (1899) 3 C. W. N. 490, <sup>Complaint not formerly disposed of.</sup> the petitioner instituted proceedings under sec. 406, I. P. C., in the Court of the Deputy Commissioner who *transferred the case* to the 1st Extra Assistant Commissioner who referred the case to the Police for inquiry and report, and the case remained pending there. The Police reported the case to be false, and (under the law as it stood then) asked for sanction to prosecute under sec. 211. The Deputy Commissioner, thereupon, without withdrawing the case to his own file, referred the matter for inquiry and report to the 2nd Extra Assistant Commissioner who, after recording evidence in the case, reported it to be one of a civil nature. The Deputy Commissioner on this again referred the case for inquiry and report to the 3rd Extra Assistant Commissioner, who submitted a report that sanction ought to be granted. On receipt of this the Deputy Commissioner, without withdrawing the case from the file of the 1st Extra Assistant Commissioner, proceeded to dispose of the case by dismissing the complaint under sec. 203, Cr. P. C., and granted sanction to prosecute the petitioner under sec. 211, I. P. C. The case ultimately came before the High Court in its revisional jurisdiction, it was held that the Deputy Commissioner had no power to pass an order of dismissal under sec. 203, Cr. P. C., in a case which he had transferred to the 1st Extra Assistant Commissioner, and which was at the time pending in the Court of the latter, nor to grant sanction under these circumstances. The rule was made

absolute on the ground "that no final order has yet been made by the Magistrate in whose file the complaint was pending, and who alone had jurisdiction to make such order in the case."

337. Thus when a District Magistrate transfers a case for trial to a Deputy Magistrate he ceases to have jurisdiction in the case and so long as the transfer is in force he cannot take any further steps unless the case is withdrawn to his file. See *Golapdy Sheikh v. R.*, (1900) I. L. R. 27 Cal. 979 ; *Amrit Majhi v. R.*, (1919) I. L. R. 46 Cal. 854 ; *Ajab Lal Khirher v. R.*, (1905) I. L. R. 32 Cal. 783 and *Radhabullav Roy v. Benode Behari Chatterjee*, (1902) I. L. R. 30 Cal. 449.

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## CHAPTER XIII.

### Bar to Prosecution.—Stay of Proceedings.

338. In this Chapter it is proposed to discuss whether the pendency of a civil suit is a bar to a prosecution under sec. 182 or sec. 211 I. P. C.; and whether an order under sec. 250 Cr. P. C., is a bar to prosecution under those sections and whether previous acquittal for want of a complaint is also a bar.

A. Whether the pendency of civil suit is a bar to prosecution under sec. 182 or sec. 211 I. P. C.

339. There is no law that the pendency of a civil suit is a bar to the prosecution. It is a question of propriety.

In the case of *Gopal Chandra Chakraborti v. R.*, (1929) 33 C. W. N. 969, it was held that "*no hard and fast rule can be laid down and that each case must be decided upon its own facts.*"

The following passage is quoted from the above ruling:—

"Even if some or all of the matters materially in issue are the same that in itself cannot be a reason for staying the criminal proceedings: *Brojobashi v. R.*, (1908) 13 C. W. N. 398. There proceedings had been taken under sec. 476, Cr. P. C., and accused tried to stifle them by filing a civil suit, and no stay was allowed. So no stay was granted in *Raj Kumari v. Bama Sundari*, (1896) I. L. R. 23 Cal. 610, a case where the proceedings related to an injury of an essentially personal nature under sec. 499, of the nature of a private prosecution, and even there the subsequent filing of a civil suit by the accused relating to the same subject-matter was not allowed as good cause for a stay. It was there pointed out that if the stay were granted the civil proceedings



would be dragged out, and the decision would not affect the action of the Magistrate who must decide on the accused's criminality for himself. It was also said that the discretion to stay or not should ordinarily be left to the Magistrate. Ghose, J., says, at page 620: 'I am not myself prepared to say that as a general rule a proceeding in a Criminal Court should be stayed pending the decision of a civil suit in regard to the same subject-matter: but what I think I might properly say is that *ordinarily it is not desirable*, if the parties to the two proceedings are substantially the same, and the prosecution before the Magistrate *is not a private prosecution*, and the issues in the two Courts are substantially identical, that both cases should go on at one and the same time.' So in *Jahangir v. Framji*, (1928) 30 Bom. L. R. 962: s. c. 29 Cr. L. J. 153, another case of defamation, it was said that the *test seems to be whether the prosecution is public or private*. Where it is public, the Court as a rule in the exercise of its inherent jurisdiction, would not stay criminal proceedings, where it was private (as in that case) there would not be the same reluctance of the Court to interfere."

"The petitioners have relied on *Lucus v. Official Assignee*, (1914) 24 C. W. N. 418, where Jenkins, C. J., said: "Though no invariable rule can be laid down, it is ordinarily undesirable to institute criminal proceedings until determination of civil proceedings in which the same issues are involved. It is too well-known to need elaboration that criminal proceedings lead themselves to the unscrupulous application of improper pressure with a view to influencing the course of the civil proceedings, and beyond that there is the mischief, illustrated by this case, of criminal proceedings being instituted with an imperfect appreciation of the facts where they have not been ascertained in the more searching investigation of a Civil Court.' While agreeing generally with the views there expressed, we must not forget that that case was one where the penal sections of the insolvency law had been invoked against the insolvent—much more in the nature of a private prosecu-

tion, and much more open to the suggestion of improper pressure on behalf of the creditors. *So if the object of the criminal proceedings be in reality to prejudice the trial of the civil suit or coerce accused to a compromise the Magistrate shall as a general rule postpone the inquiry :* *A. R. S. P. Subramanian Chetty*, (1902) 2 Weir, 415. Then of other cases referred to, they are mostly of a particular class to which particular considerations would apply, relating to documents forming the basis of attack of defence in civil suits, where the other party says they are forgeries or fraudulently obtained or the like and the criminal proceedings on that cannot have been stayed : See *Sasi Bhusan v. R.*, (1910) I. L. R. 38 Cal. 106 ; *Janki Das v. R.*, (1922) 23 Cr. L. J. 595 ; *Goberdhone v. Iswar Chandra*, (1900) 5 C. W. N. 44 ; *Anna Ayyar v. R.*, (1906) I. L. R. 30 Mad. 226, and *Ram Charan v. R.*, (1906) 5 C. L. J. 233, where however there was no appearance to show cause. In *Debi Mahito v. R.*, (1916) 20 C. W. N. 1116, a stay was ordered for proceedings under sections 193 and 209, I. P. C., pending an appeal against an order of the Civil Court revoking a succession certificate on the ground that appellant was not related to deceased : in this case also no cause was shown. Then there may be cases where the proper course may be to expedite civil proceedings where a question of fact involved therein is also raised in criminal proceedings : *Raj Kumar v. R.*, (1920) I. L. R. 43 All. 180."

In the case of *Jagannath v. Rajagopalchari*, (1931) 33 Cr. L. J. 147 : s. c. 135 I. C. 513 (Pat), it has been held that whether a Deputy Commissioner acts in his Revenue or Magisterial capacity, sec. 475-B, Cr. P. C., only empowers him as a superior Court to direct the withdrawal of a complaint which the subordinate Court might have made under sec. 476. He has no power to stay criminal proceedings until the disposal of a civil suit *An order to stay criminal proceedings cannot be passed in an appeal from a complaint which has been actually made by a subordinate*

revenue authority to a competent Magistrate and which is being investigated by the latter. The powers of a District Magistrate under sec. 17, Cr. P. C., relate to the distribution of the business among Subordinate Magistrates. The said section does not empower a District Magistrate to stay proceedings in a Criminal Court.

340. There may be cases where stay of criminal proceedings pending a civil suit concerning the same matter was considered desirable. See *Jadu Lal v. Lowis*, (1907) 11 C. W. N. 712 : s. c. I. L. R. 34 Cal. 848, and *Asrabuddin Sarkar v. Kalidayal Mullik*, (1914) 19 C. W. N. 125.

341. The object of a prosecution would be to vindicate public justice and it is not desirable that the accused should be hampered in the prosecution of the suit. But it is a different thing when a criminal Court after inquiry has held that there are grounds for instituting criminal proceedings against an individual. It would not advance the cause of justice to stay its hand indefinitely or at any rate, possibly for some years, because that individual has filed a civil suit. See *Jadu Lal v. Lowis*, (1907) 11 C. W. N. 712; s. c. I. L. R. 34 Cal. 848. As held in the case of *Hem Chandra v. Atal Behari*, (1908) I. L. R. 35 Cal. 909, when on the evidence in a case, the Court is of opinion that it is in the highest degree desirable that the inquiry should be conducted both in the interests of justice as well as of the accused and of all the parties concerned as speedily as possible, the High Court would not be justified in staying proceedings, merely because a civil appeal from the judgment out of which the criminal proceedings were initiated, is pending in the High Court. See also *In re Bal Gangadhar Tilak*, (1902) I. L. R. 26 Bom. 785.

The Lahore High Court in the case of *Lorind Singh v. R.*, (1930) 31 Cr. L. J. 1053 : s. c. A. I. R. 1930 Lah. 802, observed that "the rule that criminal proceedings should not be started when the same question is also involved in a pending civil litigation is not a rule of law but a rule dictated by prudence and its application must depend on the merits of each case."

**B.—Whether an order under sec. 250 Cr. P. C., is a bar to prosecution under sec. 182 or 211 I. P. C.**

342. Section 250 of the Code of Criminal Procedure provides for compensation to be paid by the complainant or informant when his complaint or information is found to be false, frivolous or vexatious

There was a conflict of decisions as to whether an order for a prosecution under sec. 211, should be made when the complainant has been directed to pay compensation.

343. The Calcutta High Court, in *Shib Nath Chong v. Sarat Chunder Sarkar*, (1895) I. L. R. 22 Cal. 586, held that to sanction or direct prosecution, *and also* to proceed to award compensation under sec. 560 (now sec. 250) is an *improper exercise* of Magistrate's discretion. By such an action the Joint Magistrate was, in point of fact, prejudging the issue of the charge which he was submitting for trial.

344. In *Bachu Lal v. Jagdam Sahai*, (1898) I. L. R. 26 Cal. 181, it was pointed out that although it was *not illegal* to award compensation to the accused as well as to direct prosecution of the complainant for bringing a false charge, yet a Magistrate who adopts the two courses simultaneously, exercises his discretion *improperly*.

345. In *Lalji Hari v. R.*, (1917) 20 Cr. L. J. 226 : s. c. 49 I. C. 850 (Pat), the Magistrate, while disposing of a criminal case before him, ordered the complainant to pay Rs. 100 as compensation to the accused under sec. 250 Cr. P. C. Three weeks after the disposal of the case, the Magistrate passed an order directing the issue of notice upon the complainant to show cause why he should not be prosecuted for an offence under sec. 211, I. P. C. It was held that in the circumstances of the case, the order was not proper and would not be justified in the exercise of sound judicial discretion. The High Court says, "No doubt, no hard and fast rule can be deduced from the sections in the Code of Criminal Procedure as to whether the Court would or would not be justified in the exercise of a sound judicial discretion to direct the prosecution under sec.

211, long after the conclusion of the trial before it. It depends, in my opinion, upon the circumstances of each case whether the Magistrate's order is a proper one or not."

346. In *Adikkan v. Alagan*, (1897) 1 L. R. 21 Mad. 237, it was held that there is nothing illegal in awarding compensation as well as directing the prosecution under secs. 211 and 193 I. P. C., at one and the same time. The High Court observed, "The sanction to prosecute for making a false charge is granted (now a 'complaint' is made), on the grounds of public policy for an offence against public justice. The compensation is granted partly in order to deter complainants from making vexatious and frivolous complaints, and partly in order to compensate the accused for the trouble and expense to which he has been put by reason of the false complaint. We can see no ground in law or reason why compensation should not be granted in a case in which the Magistrate also directs a prosecution for making a false charge."

In this case the orders for prosecution and compensation were passed simultaneously showing that the Magistrate intended to take both the actions when the trial was finished.

347. The point has been set at rest by the amendment of the section 250 by Act XVIII of 1923; for the sub-sec. (2C) enacts :—"No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him :

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter."

Thus it is clear that there is no bar to the prosecution of the complainant or informant under sec. 182 or sec. 211, I. P. C., when an order for compensation has been passed under sec. 250, Cr. P. C.

C.—Absence of a complaint is a bar to prosecution.

348. Under the former law want of sanction did not necessarily go at the root of the case. Now want of

complaint takes away the jurisdiction of the Court and it is not competent to try the case.

In the case of *T. Sathi Reddy v. R.*, (1929) 31 Cr. L. J. 1060 : s. c. A. I. R. 1930 Rang. 153, it was held that the want of a complaint for a particular offence is quite a different thing from an error, omission or irregularity in the complaint. It affects the jurisdiction of the Court and the legality of the trial and is not curable by sec. 537, Cr. P. C. Therefore, an order for prosecution under sec. 476, Cr. P. C., cannot make up for the absence of a formal complaint if there is no statement in the order for prosecution that the accused has committed the offence for which he is to be prosecuted. See *ante* ¶¶ 222 to 226.

In the above case it was further held that a complaint merely quoting sec. 193, I. P. C., but alleging fabrication of false evidence without any allegations of having given false evidence can in no sense be deemed to be a complaint for an offence of intentionally giving false evidence. See *ante*, ¶ 216, p. 158.

**D.—Previous acquittal for want of a complaint is no bar.**

349. In this connection the case of *Fakir Mahomed v. R.*, (1926) 27 Cr. L. J. 1105 : s. c. 97 I. C. 417, is an important one. In that case one Sahibdino filed a complaint under sec. 182 read with sec. 109, I. P. C., to the Sub-Divisional Magistrate. In it he alleged that Fakir Mahomed, at the instigation of three other persons (named in the petition) had made a false report to the Police. The report implicated Sahibdino and others in a case of theft and house-breaking.

The Sub-Divisional Magistrate, convicted Fakir Mahomed and others. On appeal the Sessions Judge reversed the convictions and acquitted them on the ground that the complaint should have been instituted not by Sahibdino but as required by sec. 195, Cr. P. C.

Thereafter the Sub-Inspector of Police filed a complaint under secs. 211 and 182, I. P. C., to the Magistrate who

issued processes against Fakir Mahomed and others under sec. 211, I. P. C. Subsequently the case was transferred to another Magistrate, before him Fakir Mahomed pleaded sec. 403, Cr. P. C., in bar of his trial. The Magistrate, however, declined to consider the plea on the ground that he had no power to do so.

Fakir Mahomed moved the Sind Judicial Commissioner's Court to quash the proceedings before the Magistrate.

In this case Tyabji, A. J. C., said, "The decision of this matter rests upon the construction of sec. 403 of the Criminal Procedure Code. The principle underlying that section is clear : no person should be tried twice for the same offence. It is involved that there should have been a first trial and then an attempt at a second trial ; the second trial is barred, if the two are identical in certain respects. The section may, therefore, be considered in regard to the particulars laid down with reference to the identity of the first and second trials respectively. Unless the requirements of the law in regard to both trials are satisfied the section does not come into operation, and the second trial is not barred."

"(A) As to the first trial sec. 403 (1) requires (I adhere to the wording of the section) :—

- (a) a person who has been tried for an offence ;
- (b) by a Court of competent jurisdiction ;
- (c) conviction or acquittal of such an offence."

"The explanation to the section specifies four classes of orders which do not operate as acquittals, *viz.* :

- (i) dismissal of a complaint ;
- (ii) stopping of proceeding under sec. 249 ;
- (iii) the discharge of the accused ;
- (iv) any entry made upon a charge under sec. 274 ;
- (d) such conviction or acquittal remaining in force."

"(B) With regard to the second trial it is required as a general rule that it must be for the same offence, as the first trial, but in this regard two sets of provisions are made :

the first of which have the effect of extending the bar, and the second of restricting it :—

(1) the second trial will be barred notwithstanding that it is for a different offence, provided

(a) it is on the same facts as the first trial, and

(b) the charge on the second trial satisfies either of the following two conditions :—

(i) the charge on the second trial might under sec. 236 of the Cr. P. C., have been made on the facts at the first trial, or

(ii) it refers to an offence for which he might under sec. 237 of the Cr. P. C., have been convicted at the first trial.

(2) On the other hand if the second trial comes under any of the following descriptions, it is not barred :—

(a) if it is for a distinct offence for which a separate charge might have been made against him on the first trial under sec. 235 (1) :

(b) when the charge on the trial for an act causing consequences, and the charge on the second trial is for a different offence from that in the first trial, such different offence being constituted by the said act together with its consequences, provided that the consequences had not happened or were not known to the Court to have happened at the time when he was convicted (in the first trial) ;

(c) if it is for an offence other than that in the first trial though constituted by the same acts, provided that the Court of the first trial was not competent to try the offence charged at the second trial."

"In order that sec. 403 should come into operation each of the two trials must satisfy the conditions above laid down for it respectively."

"In the present case the applicant (who contends that the requirements of sec. 403 are satisfied and prays that the second trial be stayed) was on the first trial charged with three others under sec. 182, read with sec. 109 of the Indian Penal Code. The second trial is on a charge under secs. 211 and 182. The principal charge at the first trial was under sec.



182 of the Indian Penal Code for giving false information with intent to cause a public servant to use his lawful power to the injury of another person. The principal charge on the second trial is under sec. 211 for falsely charging another person with having committed an offence knowing that there is no just or lawful ground for the charge."

"The question that arises with reference to the first trial is whether the accused was tried and acquitted by a Court of competent jurisdiction. Section 195 of the Cr. P. C., lays down that no Court shall take cognizance of an offence punishable under sec. 182 of the Indian Penal Code except on the complaint in writing of the public servant concerned or some other public servant to whom he is subordinate. This requirement of sec. 195 was not satisfied at the first trial. Can it be deemed that the accused 'has once been tried by a Court of competent jurisdiction and acquitted of such offence,' for the purposes of sec. 403?"

"It is necessary to refer further to the proceedings at the first trial. It does not appear whether the Magistrate's attention was drawn to sec. 195 of the Cr. P. C. In any case he proceeded with the trial, and convicted the appellant and the other accused. Then there was an appeal to the Court of Session, at which the public prosecutor did not oppose the reversal of the conviction. The learned Sessions Judge held that it was impossible to uphold the convictions either on the merits or on the technical grounds. He referred first to the neglect of the provisions of sec. 195, also to the erroneous procedure followed in other respects, and then going on expressly to deal with 'the merits of the case' he referred to the nature and effect of the evidence. The final portion of his order was thus worded: 'I allow this appeal and reverse the convictions and sentences. The appellants who are on bail are discharged'."

"It is not easy to determine the effect of these proceedings in reference to sec. 403. First as to the procedure followed by the Magistrate. It is clear that sec. 195 ought to have

prevented him from taking cognizance of the complaint. The order that he ought to have made is indicated by sec. 201, which requires the complaint to be returned. It is true that sec. 201 contemplates that there should be another Court that is competent to take cognizance; and as in the case we are considering no Court was authorised to take cognizance, an endorsement exactly in accordance with sec. 201 would have been inappropriate. Had the Magistrate returned the complaint with an endorsement that it should be presented by the proper person in compliance with sec. 195 his order would have followed the analogy of sec. 201."

"The learned Magistrate, in any case acted in contravention of sec. 195. Ultimately he convicted the accused. On appeal, the Sessions Court's powers are laid down, in sec. 423; appeals from convictions are dealt with in cl. (b) of sec. 423; that clause empowers the Appellate Court amongst other things to order a re-trial by a Court of competent jurisdiction. Though there is no provision in cl. (b) more closely approaching the requirements of the present case, even this provision could not have been applicable. But under cl. (c) the Sessions Court could presumably have altered the order into one returning the complaint."

"Had either the learned Magistrate or Sessions Judge followed the course indicated above, and had the complaint been returned, there is no doubt, that there could not have been said to have been any first trial under sec. 403, barring a second trial."

"On the other hand it is equally clear that the Magistrate had initially jurisdiction to consider whether the requirements of sec. 195 were satisfied; and doing so he would have had jurisdiction to make the order (however erroneous that order might in any particular case be) that the complaint satisfied the requirements of sec. 195. In other words the Magistrate before whom the complaint is presented, has jurisdiction initially to determine whether the complaint is or is not presented by the proper person specified in sec. 195. It is conceivable that in some cases this question may be doubtful.

The Magistrate would be a Court of competent jurisdiction to determine this question and on appeal the Sessions Court would have jurisdiction to determine whether the question had been correctly decided by the Magistrate."

"The courses actually followed by both the Magistrate and the Sessions Judge were, as I have already pointed out, quite different."

"There is, however, a further difficulty in connection with the first trial. The learned Sessions Judge proceeded as stated before to consider the case on the merits. (a) Had he any jurisdiction to consider the merits? (b) In any case as he considered the formal defect of sec. 195 and held on that point in favour of the accused, can the effect of his judgment be deemed to be an acquittal under sec. 403, or must it be taken to have no more effect than an order that the complaint be returned for presentation by the proper person in compliance with sec. 195? *Ct. Umeruddin v. R.*, (1909) L. L. R. 31 All. 317 : s. c. 9 Cr. L. J. 526. Both aspects of the question depend on a consideration of the provisions of the Cr. P. C., already referred to, and on those of sec. 537. Under the latter section (omitting the words not now relevant) 'no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal, on account of any error, omission or irregularity in the complaint, order, judgment or other proceedings before or during trial, unless such error, omission, or irregularity has in fact occasioned a failure of justice.'"

"It was pressed upon us that the judgment of the Sessions Court must be taken to have proceeded on sec. 537."

"As against this it is argued that the learned Judge did not in terms hold that the objection on behalf of the accused under sec. 195 was an irregularity in the complaint which in fact had not occasioned a failure of justice. In so far as this last argument is an objection merely to the form of the words in which the judgment is couched, I am willing to put it aside. A Court may consider that there are two objections

to taking a view adverse to one of the parties, and that though the one objection does not arise unless the other is rejected, each is a valid and proper objection. The learned Judge might have considered first that the objection on behalf of the accused under sec. 195 was valid, but that he would assume that it was not valid and proceed to consider the case on the merits; and that on the merits, too, the accused should be acquitted."

"It is clear that the interpretation of the learned Sessions Judge's judgment which the applicant puts forward is that it is a decision on two points in the alternative, and we are asked to omit from consideration one alternative, the technical one, and to consider only the other alternative, his decision on the merits. But the difficulty in so acting is that the omission of the technical alternative, if I may so call it, leaves the complete hiatus in the other alternative. In order to acquire jurisdiction to consider the merits it was necessary for the learned Sessions Judge not only to decide the technical alternative in a way contrary to that which he indicates, but it was necessary for him to decide other questions of law and fact; notably the questions, first, whether disregard of sec. 195 was such an error, omission or irregularity, in the complaint, as is referred to in sec. 537 (a), secondly, whether disregard of sec. 195 prevents the Court from being deemed a Court of competent jurisdiction, as these words are used in secs. 403 and 537 (a), or whether the said words refer to the character and status of the tribunal as in illustrations (f) and (g) to sec. 423; *cf. Ganapathi Bhatta v. R.*, (1911) I. L. R. 36 Mad. 308; s. c. 14 Cr. L. J. 214; and, thirdly, whether or not a failure of justice had in fact been occasioned."

"In considering these questions what would have had to be decided was not merely whether the proceedings as they had actually been conducted had occasioned a failure of justice between the parties before the Court, but whether for the purpose of preventing injustice the proceedings should be accepted as proceedings not obnoxious to sec. 195, *via*,

whether they should be deemed in effect to arise out of a complaint by the person entitled to make such a complaint. The unusual nature of these questions is obvious, Civil Courts are, no doubt, familiar with the notion that a right must be enforced primarily at the instance of the person in whom it inheres ; but in cases coming before the Criminal Courts the personality of the complainant is important only\* in exceptional cases. But proceedings to which sec. 195 refers are among the exceptions, and the operation of sec. 403 in such cases must, necessarily, be complex and difficult ; sec. 403 itself does not refer to the identity of parties in the first and second trials as a necessary condition to the plea of *autrefois acquit* ; it refers only to the identity of the charges, in which respect it may be contrasted with the doctrine of *res judicata* in Civil Procedure, and yet in the trial of the offences to which sec. 195 refers, the personality of the complainant is a matter of primary importance ; unless the proper complainant is before the Court, it is required to desist from taking cognizance of the complaint."

"The difficulty in putting the correct interpretation of sec. 195 in connection with sec. 403 is enhanced, first, by the fact that sec. 403 omits to refer to the complainant ; it refers only to the identity of the charge, and the competence of the Courts ; and, secondly, by oversight of the fact that sec. 195 though it forms a part of the Code of Procedure in reality contains a provision of the substantive law of crimes. For sec. 195 does not deal with the competency of the Courts, nor lay down which of several Courts shall in any particular matter have jurisdiction to try the case ; and yet the language of sec. 195 is apt to these matters, and it forms part of the Chapter entitled 'of the jurisdiction of the Criminal Courts in inquires and trials.' Section 195 in reality lays down that the offences therein referred to (or rather the acts constituting those offences) shall not be deemed to be any offences at all, except on the complaint to the persons or the Courts therein specified ; it enhances the connotation of those

offences and limits the scope of their definition. This limitation of the definition is brought about by saying that no Court shall take cognizance of the offences unless this condition, requisite for initiation of proceedings is satisfied; see the heading preceding sec. 190."

"Some of the questions to which I referred a little while ago are questions of law, others of fact. The question of law whether the Magistrate had jurisdiction to proceed with the trial and whether the erroneous proceedings could be condoned under sec. 537 has been variously answered by the Courts. In *R. v. Menghraj Devidas*, (1919) 66 I. C. 657 : s. c. 23. Cr. L. J. 305, and *Ganapathi Bhatta v. R.* (1911) I. L. R. 36 Mad. 308 : s. c. 14 Cr. L. J. 214, it was held that the Court had jurisdiction. The contrary view was taken in *In re Samsudin*, (1896) I. L. R. 22 Bom. 711; *R. v. Jiwan*, (1914) I. L. R. 37 All. 107 : s. c. 16 Cr. L. J. 144, *Jivram Dankarji v. R.*, (1915) I. L. R. 40 Bom. 97; *Rani Nath v. R.*, (1925) 94 I. C. 897 : s. c. 27 Cr. L. J. 705; *Banerjee v. Bipin Behary Ghose*, (1925) 30 C. W. N. 382 : s. c. 27 Cr. L. J. 751, *Umer-ud-din v. R.*, (1909) I. L. R. 31 All. 317 : s. c. 9 Cr. L. J. 526. The Code has been materially altered since the decisions were given. But assuming that the learned Judge could have condoned these erroneous proceedings, he has not purported to do so. Neither has he turned his attention to those questions of fact, which must be answered as a preliminary to the exercise of any such powers that he may be assumed to have."

"There is another objection taken to the application of sec. 403. As I stated before, in order that that section may come into operation, both the first and the second trials must satisfy the conditions laid down in regard to each. Does the second trial conform to the requirements of sec. 403? It is not for the same offence inasmuch as the first trial was got a charge under sec. 182; the second under sec. 211. But it is said that the second trial is on the same facts as the first and it satisfies both the alternatives with reference to

secs. 236 and 237. In regard to this point also the same question arises in a new shape. Did the Court which held the first trial have jurisdiction to try the offence which is the subject of the charge on the second trial, sec. 403, sub-sec. (4)."

"Summing up, therefore, the position is this:

"A Magistrate proceeds to take cognizance of an offence in circumstances in which sec. 195 of the Cr. P. C., lays down that he shall not take cognizance of it. On appeal the Sessions Judge points out the Magistrate's initial error in at all taking cognizance of the offence, and goes on to say that even so, on the merits the accused ought not to have been convicted. The decisions of the Court are not agreed as to whether the Sessions Judge had power to condone the initial error. The Sessions Judge does not purport to condone it, nor does he address his mind to those questions which must admittedly be considered before such power to condone (assuming that they exist) can be exercised. And now it is argued that the said proceedings before the Sessions Court, *viz.*, the acquittal of the accused on the complaint of a person not authorised to present the complaint prevents the person authorised to do so from prosecuting the proceedings."

"It seems to me clear that it would be contrary both to the spirit and the letter of sec. 403 to consider that further proceedings are barred in these circumstances."

350. Section 403 Cr. P. C., has laid down when a previous acquittal or conviction is a bar. It runs as following:

(1) "A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sec. 236, or for which he might have been convicted under sec. 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate

charge might have been made against him on the former trial under sec. 235, sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, or section 188 of this Code.

*Explanation.*—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under sec. 273, is not an acquittal for the purposes of this section."

351. In *Fakir Mahomed v. R.*, Kincaid, J. C. said, "Now, here there is no complaint by a public servant as required by sec. 195. The complaint of Sahibdino cannot be said to be an error, omission or irregularity in a complaint that was never made. Before the error, omission or irregularity in a complaint can be cured, the complaint must exist. As there is no complaint, sec. 537 (a) does not apply. The Magistrate's trial was void *ab initio* and so, too, was any expression of opinion on the merits by the learned Sessions Judge. As was observed by the Judges in *Baperjee v. Bipin Behary Ghose*, (30 C. W. N. 382): 'A verdict of acquittal is, no doubt, immune from challenge, but it is only when an accused has been tried and acquitted of an offence that the immunity arises.' Here, the accused, Fakir Mohamed, was undoubtedly



acquitted, but he was never tried by a Court of competent jurisdiction."

"He was indeed acquitted by the Sessions Judge because he could not be tried. He cannot, therefore, plead immunity now."

But in the case of *Rajabali v. R.*, (1930) 180 I. C 442 :

Fresh complaint by a Magistrate when his previous complaint was refused and proceedings remanded by Appellate Court, s. 403 Cr. P. C., is no bar.

s. c. 32 Cr. L. J. 521 (Sind), where a Magistrate dismissed an application under sec. 476, Cr. P. C., for the prosecution of a person, but on appeal, the Appellate Court, purporting to act under sec. 476-B, remanded the proceedings to the Magistrate for further inquiry which resulted

in a complaint being filed by the Magistrate and in the conviction of the accused, it was held that though the order of the Appellate Court was illegal, the order of the Magistrate making complaint and the subsequent proceedings were not illegal inasmuch as there is no provision in the Criminal Procedure Code which lays down that once a Magistrate declines, under sec. 476 of the Code to file a complaint, he is *functus officio*, or that a complaint subsequently filed by him confers no jurisdiction on the trial Court to deal with the person complained against. "It is hardly open to argument that a refusal by the Magistrate under sec. 476 of the Code to file a complaint against an accused person attracts the applicability of the doctrine of *autrefois acquit* enunciated by sec. 403 of the Code, or that it amounts to a judgment within the meaning of secs. 366 and 369 of the Code, which may not, therefore, be subsequently reviewed." It is now well settled that every irregularity or illegality does not *ipso facto* vitiate a trial or call for the exercise of the powers of interference by the Appellate or Revisional Court.

It would not be out of place to note here that there is no

No bar in making a complaint against a Receiver.—No leave of the Civil Court is necessary for his prosecution in an offence referred to in sec. 195 Cr. P. C.

bar in prosecuting a Receiver when an offence referred to in sec. 195 Cr. P. C., is committed by him and no leave of the Civil Court is necessary before making a complaint against him.

In the case of *Khimchand v. Devakaran*, (1928) 115 I. C. 387: I. L. R. 52 Bom. 898 : 30 Cr. L. J. 465, it was pointed out that the leave of the Civil Court is not a condition precedent to a Magistrate's taking cognizance of a complaint against a Receiver appointed by the Court. A criminal offence by a Receiver would be clearly in respect of an act in excess of the authority of the Receiver appointed by a Civil Court and the reason of the rule requiring leave of the Court before suing the Receiver would not apply to a criminal prosecution against the Receiver for violation of the Criminal Law. Hence when any offence referred to in sec. 195 Cr. P. C., is committed by a Receiver, for such an offence, no leave of the Civil Court is necessary before making a complaint.

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## CHAPTER XIV.

**Trial.—Disqualification of some Courts in some cases.—Alteration in conviction.—Onus.—Evidence.—Charge against the accused.—Charge to the Jury.—Punishment.—Abetment.**

**A.—Trial.—Disqualification of some Courts in some cases.**

352. As stated before when a false charge is made to the Police and on the police report the Magistrate directs the prosecution of the informant, the offence is not committed in or in relation to proceedings in Court and so does not come within sec. 195(1) (b), so as to require a complaint by the Court. The Magistrate takes cognizance of the offence on the police report and is therefore not disqualified to try the case in such cases. *Karim Bakhshi v. R.*, (1904) 2 Cr. L. J. 66 (Punj).

353. But in those cases in which cognizance cannot be taken except on the complaint of the Court or of the public servant concerned the complaining Court or the public servant as the case may be, cannot take cognizance of the case nor try it himself. For, no one can be judge in his own cause. Section 487 Cr. P. C., enacts that (1) "*Except as provided in secs. 480 (contempts in the view or presence of a civil, criminal or revenue Court) and 485 (refusal to answer questions or produce documents), no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, shall try any person for any offence referred to in sec. 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.*"

"(2) *Nothing in sec. 476 or sec. 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court.*"

The disqualification is restricted to the Judge of a criminal Court or a Magistrate including a Presidency Magistrate but it does not extend to a Judge of the High Court. It is further restricted to an offence under sec. 195 when such offence is committed before the Judge of the Criminal Court or the Magistrate or in contempt of his lawful authority or is brought under his notice<sup>2</sup> as such Judge or Magistrate in the course of a judicial proceeding. So, the prohibition is as to the trial and is not extended to an inquiry.

354. The prohibition in sec. 487 Cr. P. C., is a personal prohibition. The mischief to be prevented is that the same person should not decide a matter which he may have already prejudged. (1887) 1 L. R. 1 Mad. 305: s. c. 2 Weir 506.

355. The words "such Judge" mean a "Judge of a Criminal Court" and does not mean a Judge of a Civil Court or a District Judge. See *R. v. Sarat Chandra Rakshit*, (1889) 1 L. R. 16 Cal. 766, 771 (F. B).

356. Section 556 of the Criminal Procedure Code lays down: "No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself."

*"Explanation.*—A Judge or Magistrate shall not be deemed a party, or personally interested, within the meaning of this section, to or in any case by reason only that he is a Municipal Commissioner or otherwise concerned therein in a public capacity, or by reason only that he has viewed the place in which an offence is alleged to have been committed, or any other place in which any other transaction material to the case is alleged to have occurred, and made an inquiry in connection with the case.

#### ILLUSTRATION.

A, as Collector, upon consideration of information furnished to him, directs the prosecution of B for a breach of the Excise Laws. A is disqualified from trying this case as a Magistrate."

The principle in the above section is that *Nemo debet esse*

*judex in propria sua causa.* No one can be judge in his own cause.

357. In *Sergeant v. Dale*, L. R. 2 Q. B. D. 558, it was laid down that the law does not measure the amount of interest which a Judge possesses. If he has any interest to the decision of the question one way he is disqualified, no matter how small the interest may be.

358. It was held in *Ambika Singh v. R.*, (1926) L. L. R. 5 Pat. 450, that when a false complaint is made to a Magistrate and the complainant is proceeded against under sec. 211, Penal Code, with respect to the complaint, the Magistrate to whom the complaint was made is not himself competent to inquire into the offence under sec. 211, Penal Code.

359. In *Faiz Muhammad v. R.*, (1913) 14 Cr. L. J. 385: s. c. 20 L. C. 209 (Nag), a Forest Officer asked the Deputy Commissioner of the District to administer a warning to the accused for having made a false report to that officer, and the Deputy Commissioner directed prosecution of the accused under sec. 182 I. P. C., on the ground that he was satisfied that there was a clear case of a false report deliberately made. It was held that under the circumstances, the Deputy Commissioner was disqualified from hearing as District Magistrate the accused's appeal from a conviction under sec. 182, Indian Penal Code, inasmuch as *such disqualification took away his jurisdiction, and such defect could not be cured by consent or want of objection on the part of the accused.*

360. A Sessions Judge who makes a complaint under sec. 476 Cr. P. C., is a party to the proceedings initiated in pursuance of his complaint within the meaning of sec. 556, Cr. P. C., and is, therefore, disqualified from hearing an application to revise an order discharging the persons complained against. See *In re Mudkaya Andanaya*, (1926) 99 L. C. 85: s. c. 28 Cr. L. J. 53 (Bom).

261. In *Sai v. R.*, (1926) L. L. R. 8 Lah. 496, the High Court pointed out that an accused is entitled to a decision

from a Judge who approaches his case with an absolutely open mind. The order of the Sessions Judge in this case was set aside on the ground that he could not be allowed to be both complainant and Judge in the same case.

### Trial.—Procedure.

362. Both secs. 182 and 211 are non-cognizable, both are bailable and both are non-compoundable. Sec. 182 is a summons case and sec. 211 is a warrant case. In a case under sec. 182, a summons and in a case under sec. 211, a warrant shall ordinarily be issued in the first instance; a case under sec. 182 is triable by a Presidency Magistrate or a Magistrate of the first class; if punishable with imprisonment for seven years and upwards, it is triable by a Court of Session, a Presidency Magistrate or a Magistrate of the first class; if the offence charged be capital or punishable with transportation for life, it is triable by a Court of Session. An offence under sec. 182 is triable summarily.

362-A. In the case of *Tofazel Hoosein v. H. C. Hunt*, (1929) 34 C. W. N. 556, the point arose whether a conviction is vitiated by adopting summary procedure in a case in which an offence disclosed is not triable summarily. In this case the petitioner lodged an information with the Superintendent of Police that he and his mother had been unlawfully confined by a certain Police Officer and that money was extorted wrongly from them. The petitioner was tried summarily on a charge under sec. 182 I. P. C., and convicted, it was held that the case against the petitioner was ordered to be retired. Cuming, J., observed, "\*\*\*\* The charge against the petitioner does fall under sec. 211 I. P. C. This point was decided by the decision of a Full Bench of this Court in the case of *Karim Bakshi v. R.*, (I. L. R. 17 Cal. 574, F. B.), where it was held that a person who sets the criminal law in motion by making a false charge to the Police of a cognizable

Summary Procedure adopted in a case in which offence disclosed is one which is not triable summarily.

offence institutes criminal proceedings within the meaning of sec. 211 I. P. C. In this case the allegation against the petitioner is that he has made a false report to Mr. Hunt, the Superintendent of Police that certain persons had wrongfully confined him and his mother. Now, the wrongful confinement of the petitioner's mother would fall under sec. 342 I. P. C. Sec. 342 admittedly is a cognizable offence. Therefore it is clear that the present charge against the accused does fall under sec. 211 and that therefore he should not have been tried summarily." The High Court set aside the conviction and sentence and ordered a retrial.

363. It has been noticed before that the two offences under sec. 182 and sec. 211 often overlap each other and the cognizance and the trial of one differ from those of the other. If in a particular case the facts do not bring home a charge under sec. 211, but justify a conviction under sec. 182, the question arises if there can be a conviction under the latter section when the trial was on a charge for the graver offence.

Section 258, Cr. P. C., provides that though not charged with a particular offence, an accused may be convicted of such offence provided the particulars proved constitute a complete minor offence or reduce the offence to a minor offence. The question is if an offence under sec. 182 is a minor offence in relation to sec. 211 within the meaning of this section.

364. In *R. v. Khubomal*, (1914) 27 I. C. 152 : s. c. 16 Cr. L. J. 104 (Sind), it has been held that an offence under sec. 211 I. P. C., includes an offence under sec. 182 I. P. C., and therefore it is competent for the Magistrate to convict an accused under sec. 182, though the accused may be charged under sec. 211 I. P. C., (provided of course, that these are no bar to such convictions, such as want of a complaint etc.).

Trial for an offence under sec. 182 when an offence under sec. 211 is also committed.

365. When the offence comes under both secs. 182 and 211, the opinions of the High Courts differ as to whether it is right to convict the accused under sec. 182 I. P. C., to the exclusion of sec. 211 I. P. C.

Opinion differs.

366. The Bombay High Court in *R. v. Arjun*, (1882) L. L. R. 7 Bom. 184, held that where a person specifically complains that another man *has committed an offence*, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge under sec. 211 I. P. C., and not under sec. 182 I. P. C. The accused in this case being convicted under sec. 182, the conviction was set aside and retrial was ordered. The same view was taken in *Apaya Tatoba Munde v. R.*, (1913) 15 Bom. L. R. 574: s. c. 14. Cr. L. J. 491.

367. In *Bhokteram v. Heera Kolita*, (1879) L. L. R. 5 Cal. 184, one Heera brought a charge of theft against Bhokteram at the Police Thana. The Police after investigation, reported the case to be false. Thereupon Bhokteram instituted before the Assistant Commissioner a charge under sec. 211. The Assistant Commissioner placed him on his trial on a charge under sec. 182; and after a summary trial convicted him. The High Court in its revisional jurisdiction held that an offence under sec. 211 includes an offence under sec. 182; and there was no reason why, in a case of this nature, proceedings should not be taken under either section, although it may be, that *in cases of a more serious nature, the proper course would be to proceed under sec. 211*; and pointed out that the case of *Raffee Mahomed v. Abbas Khan*, (1867). 8 W. R. Cr. 67, was such a case; and it could not be dealt with by a Magistrate.

These cases were followed by *R. v. Sarada Prosad Chatterjee*, (1904) L. L. R. 32 Cal. 180, in which the accused, a railway station-master, sent the following telegram to the Police;—"A bag of paddy was stolen from my goods-shed last night. Thief was caught. Please come, prosecute him." It was held that the case not being a serious one, it was quite legal to prosecute the accused under sec. 182 I. P. C.

368. It may be stated here that in the case of *Giridhari Naik v. R.*, (1900) 5 C. W. N. 727, it was laid down that when a false charge of theft is made to the Police of a



cognizable offence, the offence committed by the person making the false charge falls within the meaning of sec. 211 and not sec. 182. This decision purports to follow the Full Bench case of *Karim Buksha v. R.*, (1888) 1 L. R. 17 Cal. 574.

With the greatest respect to the Judges, it is submitted that the Full Bench only decided that a person who sets the criminal law in motion by making a false charge to the Police of a cognizable offence institutes a criminal proceeding within the meaning of sec. 211 of the Indian Penal Code. Sec p. 48 *et seq.*

370. The Patna High Court in *Daroga Gope's case* [(1925) 1 L. R. 5 Pat. 33] said, "Every false charge made to the Police is not necessarily an offence under sec. 211. If the intention to injure is absent, then the offence falls under sec. 182 and *there is no reason why*, if the prosecutor is unable or unwilling to prove intention, that is to say malice, *he should not be permitted to take a conviction under sec. 182.*"

Applying the above mentioned principle the High Court observed in the above case that although the Sub-Divisional Magistrate will have no jurisdiction (in the particular case) to take cognizance of the offence under sec. 211, he will be competent to investigate the complaint as regards sec. 182, which does not require the complaint in writing of the Magistrate who took cognizance of the complaint. (See pp. 39 and 40).

371. In a case reported in 7 Mad. H. C. R. (1872) App. 5, the defendant preferred a false charge of house-breaking with intent to commit theft before the Police and the Village Magistrate. The Sub-Magistrate tried and convicted him of giving false information to a public servant under sec. 182 I. P. C. The District Magistrate referred the case to the High Court on the ground that an offence under sec. 211 was committed, and that the Sub-Magistrate should have held a preliminary inquiry into the case instead of disposing of it himself.

The High Court held that there was nothing illegal in the sentence itself. "The prisoner," the High Court said, "had

committed the offence of which he was convicted, and the Sub-Magistrate had jurisdiction over it. It has been held after much consideration, and after a full review of the difficulties felt elsewhere, that, *where the evidence discloses an offence of a graver character without the jurisdiction of the tribunal, this Court may quash the conviction and sentence for the minor offence, and direct a trial before a tribunal having jurisdiction for the graver.* It has also been repeatedly held that whether it will do so or not *is a question, not of law, but of expediency* on the facts of the particular case. The present seems to the Court a case in which such interference is not expedient."

372. In *Muthu Goundan*, (1924) 26 Cr. L. J. 962 : s.c. 87

Taking cognizance of an offence under sec. 211, does not necessarily imply, taking cognizance under sec. 182."

L. C. 418 (Mad), that although an offence under sec. 182 is contained in an offence under sec. 211, 'it is not correct to say that the Court taking cognizance of an offence under sec. 211, *ipso facto* takes cognizance of one under sec. 182 I. P. C., *if there is no complaint of the public servant concerned*, (vide sec. 195, (1) (a) Cr. P. C.). The essence of an offence under sec. 182 is not the falseness of the

In prosecution under sec. 182 there must be previous complaint and an alteration of charge is wrong when there is no complaint.

information, as it is the essence of an offence under sec. 211, but the contempt of the lawful authority of the public servant, and unless and until the public servant concerned chooses to move in the matter, the Court has no authority to do so *suo motu*, by whatever process it reaches that result. It was held in this case that the proceedings from the time of the alteration of the charge were without jurisdiction and the Magistrate was directed to start again from the original charge sheet under sec. 211 I. P. C., if the Police were still prepared to proceed with the prosecution of that charge.

373. It seems to be *contrary to public policy* and to

Complainant can not alter election.

the recognised principles of the administration of the Criminal Law that when a charge has been launched which requires complaint by a particular

authority and that authority has refused to complain, to hold that it is open to a complainant to alter his election, shift his ground and start a fresh charge on an alternative section which does not require complaint. A useful *test* is to assume that the charge under sec. 182 had been permitted to proceed to judgment; if it had resulted in a conviction which was subsequently set aside for want of complaint, then under sec. 403 Cr. P. C., that fact would have been an answer to a subsequent charge under sec. 211. The point may seem technical but a question of principle is involved, and, however right the conviction may have been on the merits, it should be set aside. (See the observation of the High Court in *Kofna Ram v. R.*, (1922) 25 Cr. L. J. 496 : s. c. 68 L. C. 32 (All). But see *ante* ¶ 349 *et seq.*

374. A converse case arises where a petitioner makes a false charge to the Police and thereafter complains to the Court. If the Police Officer now makes a complaint of an offence under sec. 182, can it be contended that the conviction on the complaint of the Police Officer bad as the facts justify a prosecution under sec. 211 I. P. C., and that a complaint by a Court is necessary.

375. In *Mula v. R.*, (1918) 49 L. C. 98 : s. c. 20 Cr. L. J. 114 : 17 A. L. J. 32 (All), the petitioner Mula on the 1st August 1918, gave information to the Police Officer that certain persons had committed theft of his property. Two days after he *made a complaint to the Magistrate to the same effect*. The Police in their investigation came to the conclusion that the information was false. The Magistrate also called upon the Police for a report. The Police reported that the complaint was false. Mula asked for an opportunity to produce his evidence. The Court allowed him to produce his witnesses without summoning the accused. After examining his witnesses the Magistrate fixed a date and issued summons to the accused to appear. On the date fixed, the petitioner Mula and his witnesses did not appear : and

False information to Police followed by complaint to Magistrate.—Police Officer, whether competent to prefer complaint under sec. 182.

the Magistrate taking no evidence against the accused discharged him. Thereupon the Police Officer to whom the false information was given *laid a complaint* against Mula under sec. 182. This was sent to a Second Class Magistrate for trial. He came to the conclusion that Mula was triable only under sec. 211, and not under sec. 182, and that he had no power to try such an offence. He returned the record to the District Magistrate who returned the record to him, pointing out that the offence of which the complaint was made was under sec. 182, and that he was bound to try it. Against this order, the High Court was moved and it was held that the District Magistrate's order was correct.

It was argued before the High Court that the first part of sec. 211 covers the offence of which a complaint was made. The High Court said, "This may or may not be correct, but one thing is certain and that is that sec. 182 does cover the case if the information given to the Police Officer was false. \* \* \* \* It is a complaint of an offence under sec. 182 of the Code to which sec. 195, cl. (a) of the Criminal Procedure Code applies. Clause (b) of that section has nothing to do with the present case."

This case was followed in *R. v. Bakshi*, (1923) 1. L. R. 46 All. 43, where it was held that the fact that a person who has made a false report to the Police has subsequently preferred a complaint in *pari materia* to a Magistrate, and thereby rendered himself liable to prosecution under sec. 211 I. P. C., (on the complaint of the Magistrate), is no bar to his being prosecuted under sec. 182 I. P. C., in respect of the report made to the Police. But see Chap. VII, ¶ 146, *et seq.*

376. In *R. v. Lakshman*, (1895) Unrep. Cr. Cases, Bom., 670, a false charge of the offence of theft was made to Police. The Magistrate tried it summarily treating it as falling under sec. 182. It was held that if the information was false, then the offence committed was one punishable under sec. 211 I. P. C., and such an offence was not triable summarily. The conviction and sentence were set aside.

377. In the case of *R. v. Atar Ali*, (1884) 1 L. R. 11 Cal.

Compounding the original charge does not absolve the informant from being prosecuted for false information.

79, Atar Ali gave information to the Police that his father was being wrongfully confined by one Minut Ali, with a view to extort a Kabuliyat from him. The Police reported the case as false, and the District Magistrate ordered his prosecution under sec. 211, I. P. C., and made over the case for trial to a Deputy Magistrate. Upon the hearing of such a charge, Atar Ali pleaded that he had compounded the original charge laid by him against Minut Ali, and that therefore the charge against him under sec. 211 could not lie. The Deputy Magistrate without hearing any evidence dismissed the case. It was held that the fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under sec. 211. The Deputy Magistrate's order was set aside and case was ordered to be proceeded with.

#### B.—Trial.—Alteration in Conviction.

378. As observed before (see *ante* ¶ 108 *et seq.*) every

Prosecution under sec. 211 but conviction under sec. 182.

offence under sec. 211 comes within the wording of sec. 182 I. P. C., and a person against whom a case has been started under sec. 211 can be convicted under sec. 182 I. P. C., (see sec. 238 Cr. P. C.), when there are sufficient material and there is no bar to the prosecution. See *ante* ¶ 363 *et seq.*

When, on a trial under sec. 211, the facts proved do not amount to an offence under that section, but *disclose an offence under sec. 182* (a), it is the duty of the Magistrate to *frame a charge* against the accused under the latter section and try him. See *The Public Prosecutor v. Thavaslandi Thevan*, (1903) 4 I. C. 1039; s. c. 11 Cr. L. J. 154; 6 M. L. T. 175.

#### C.—Trial.—Charge.

379. A charge under sec. 182 I. P. C., with necessary

Form of charge under sec. 182 I.P.C.

alteration and addition as the place may require, should run thus :

I, (*name and office of Magistrate etc.*) hereby charge you (*name of the accused person*) as follows,—

That you — on or about the — day (*month and year*) — at — gave to — (*name of the public servant*), a public servant, the following information namely, — (*state the information*) intending thereby, to cause (*or knowing it to be likely that you would thereby cause*) the said public servant to do (*or omit*) something, to wit — which the said public servant ought not to do (*or omit*) if the true state of facts were known by him (*or to use the lawful power of such public servant to the injury (or annoyance) of — and thereby committed an offence punishable under section 182 of the Indian Penal Code, and within my cognizance.*

And I hereby direct that you be tried on the said charge.

380. In a charge under sec. 211, the 'specific nature of the Charge,—sec. 211, false charge should be stated as the section I.P.C. contemplates two distinct offences. See *R. v. Nobokisto Ghose*, (1867) 8 W. R., Cr. 87, *ante* ¶ 55, p. 41. See also *In re Kodangi*, (1931) 33 Cr. L. J. 173: s. c. A. I. R. 1932 Mad. 24; see p. 287.

The charge may run as follows:—

I, (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows:—

That you — on or about the day of — at — with intent to cause injury to one — instituted (*or caused to be instituted*) criminal proceedings before — charging the said with having committed the offence of [or falsely charged the said — before — with having committed the offence of — knowing at the time that there was no just or lawful ground for such proceeding (*or charge*) against the said —] and that you thereby committed an offence punishable under sec. 211 of the Indian Penal Code, and within my cognizance (*or within the cognizance of the Court of Session, or the High Court*).

And I hereby direct that you be tried by this Court (*or the Court of Session, or the High Court*) on the said charge.

381. In *Poonit Singh v. Madho Bhot*, (1886) L. L. R. 13

One indictment only for a false information given against many persons.

Cal. 270, during the investigation of a theft case by a Police Officer, Poonit Singh gave an information to a Police Officer in the course of which two persons (Chunder Koomar and Abdulla) were named in whose houses stolen properties would be discovered. The houses of those two persons were searched. No property was found, and the original case was reported to be false. Upon complaint the Deputy Magistrate found that the information was false and the accused was punished for two offences on two distinct charges under sec. 182 of the Indian Penal Code, one in the matter of Chunder Koomar, and the other in that of Abdulla, and sentenced him to three months' imprisonment under each head. It was held that although the information related to two different persons, the accused could be charged with having made only one false statement, and punished for one offence under sec. 182, and he was therefore erroneously tried for two distinct offences. The High Court set aside the conviction and sentence in the second case, *viz.*, the case which was initiated on the complaint of Abdulla, and the conviction and sentence in the case which was instituted on the complaint of Madho Bhot. *gomastafi* of Chunder Koomar was ordered to stand.

382. In *Gopal Kaffar v. R.*, (1920) 22 Cr. L. J. 333: s. c.

One charge for separate informations given by different persons on different dates is wrong.

61 I. C. 61 (Cal), two persons, acting separately and on different dates, gave similar information to the Police charging a third person named Bonomali with being in possession of stolen property. The Police, after inquiry, were able to do nothing further in connection with the properties that were found. A complaint was made by Bonomali against these two persons and they were tried and convicted.

The charge was that on a particular date both the accused falsely informed the Police against Bonomali charging him with receiving stolen properties and etc.

The High Court held that the charge was wrong, as in the charge the Magistrate "has charged both the accused as if they have accomplished the impossible feat of giving of one information; whereas, in fact, they gave separate informations on different dates. He also ought not to have tried the two accused together in respect of giving false information. "If he was of opinion that one accused had abetted the other in respect of giving false information, he might have tried them together, charging one with giving false information and the other with abetment, but he has not done that. He has charged the two men jointly with one offence, whereas it is obvious they ought to have been separately tried and there ought to have been a separate charge against each in respect of the information given by him."

383. If a person commits an offence under sec. 182 or 211, and he supports his false case by false evidence he may be prosecuted under sec. 182 or 211 as the case may be and also under sec. 193 or 194 or 195 I. P. C., as the case may be. See sec. 235 Cr. P. C.

Illustration (f) to section 235 Cr. P. C., runs as follows :—

A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

384. In *R. v. Ramji Sajabarao*, (1885) I. L. R. 10 Bom. 124, the accused was charged in the alternative to the effect that he on or about the 13th October 1882 at Nandarpada stated that he had seen V and M carrying teak wood from the forest, to N, range forest officer, and on 14th February, 1885, he stated on oath before the first class Magistrate at Pen, at the trial of these persons that he did not see where they had brought the wood from, and thereby committed an offence under sec. 182 or 193 I. P. C.



This form of charge was held by the High Court to be bad in law, as being an alternative charge in a form forbidden by sec. 233 Cr. P. C., which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. Nor could the accused be tried upon a charge framed in the alternative as in the form given in Schedule V—XXVIII.—(4) Cr. P. C. For, upon the facts alleged, there was no way of charging the accused with *one distinct offence* on the ground of self-contradiction. He could not successfully be charged under sec. 193 I. P. C., on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under sec. 182, for he only once gave information to a public servant.

In this case at the trial, the accused admitted the truth of the former of these statements and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either in the sec. 182 or 193 I. P. C.

The High Court observed that looking to sections 225, 232, and 237 Cr. P. C., the accused was "misled in his defence." For, if the charge had been properly framed, he would have been called upon to plead under two heads of charge, as shown in illustration (f), to sec. 235 Cr. P. C.,—one under sec. 182 I. P. C., and one under sec. 193. He would then naturally have pleaded not guilty to both, and prosecution would have failed, not being able to prove which view of the facts is the true one. Owing to the erroneous form of the charge, the accused was "entangled in a logical snare," to use the phrase of Mr. Justice Jackson in *R. v. Mahomed Hoomayoon Shaw*, (1874) 13 Beng. L. R. 324. In his dilemma he naturally chose the lesser evil, and admitted, that the second statement was the true one, thus rendering himself liable to a sentence of six months' imprisonment under sec. 182 I. P. C., in preference to one of seven years under sec. 193. Under these circumstances it was held that the accused was misled in his defence.

385. In *R. v. Bhugwan Ahir*, (1867) 8 W. R. Cr. 65, the <sup>Offences under</sup> prisoner burnt down a house of his own, and <sup>sec. 195 I. P. C., and</sup> then falsely charged the complainant with the <sup>sec. 211.</sup> offence of burning it. The Sessions Judge found the prisoner guilty under sec. 195 (fabricating false evidence to procure conviction of offences punishable with transportation for life or imprisonment for seven years or more), and sec. 211, and sentenced the prisoner under each of the sections. Hobhouse, J., observed, "The act of burning of his house by the prisoner was causing of circumstance to exist within the meaning of sec. 192 and might, therefore, be punishable in certain cases under sec. 195, and with some other sections of the Penal Code, as in this case with sec. 436 I. P. C. But here the firing of his house by prisoner was simply, it seems to me, a minor act on his part subordinate to the major act of making the false charge for the fact of the burnt house, was manifestly intended to be used as evidence of the said charge, and I think, therefore, that there should have been one finding and sentence under sec. 211, and that the finding and sentence under sec. 195 I. P. C., must be set aside."

Now, illustration (f) to sec. 235 Cr. P. C. (Act V of 1898), makes it clear that the offender may be charged with and convicted of both the offences, and this ruling is no longer a law. (See *ante* ¶ 383, p. 281).

The essentials of offences under secs. 182 and 211 are stated in ¶ 107, p. 80.

#### D.—Trial.—Evidence.

387. In a case under sec. 182, it is not necessary to <sup>Proof in cases</sup> prove malice and want of probable cause. <sup>under sec. 182</sup> But in a case under sec. 211 these materials <sup>and 211 I. P. C.</sup> are necessary. See *R. v. Ramchandra*, (1906) 1 L. R. 31 Bom. 204, see *ante*, ¶ 119; *Raghavendra v. Kashinath Bhat*, (1894) 1 L. R. 19 Bom. 717, 725, see *ante* ¶ 117; and *Rayan Kutti v. R.*, (1903) 1 L. R. 26 Mad. 640; and *ante* ¶¶ 60 and 65. In these cases it was decided that the fact

that the information is proved to be false does not throw upon the accused that he knew or believed it to be false.

388. In such criminal cases the prosecution is to make out a distinct case against the accused. In *R. v. Nobokisto Ghose*, (1867) 8 W. R. Cr. 87, it was pointed out that when a person is charged with instituting a criminal proceeding with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him : and not for the prisoner in the first instance to show that he had just or lawful grounds.

389. In a suit for malicious prosecution, in order to enable the plaintiff to succeed he must prove, What is to be proved in a case for false and malicious prosecution in a Criminal Court. *first*, that he was innocent of the charge brought against him ; *secondly*, that the defendant acted without reasonable and probable cause in instituting the prosecution ; and *thirdly*, he must satisfy the Court that the defendant was actuated by feelings of malice in the course which he took. See *Haris Chunder Neogy v. Nishi Kanta Banerjee*, (1901) I. L. R. 28 Cal. 591. Although this ruling is a civil one, the principles equally apply to a case for false and malicious prosecution in a Criminal Court. See the case of *R. v. Ramkrishna*, (1906) 5 Cr. L. J. 105 : s. c. I. L. R. 31 Bom. 204, *ante* ¶ 119, p. 90.

390. The fact that the information given by the informant is shown to be false does not cast upon the party who is charged with an offence under sec. 182, the burden of showing that when he made it he believed it to be true. The prosecution must make out that the circumstances were such that the only reasonable inference was that he must have known or believed it to be false. *Gaya Barhai v. R.*, (1922) 69 I. C. 81 : s. c. 23 Cr. L. J. 641 (0).

Similarly, it was held that failure of a complainant to prove his case is not the same thing as the institution of a maliciously false case, so as to sustain a charge of an offence under sec. Failure to prove the case, — no inference can be drawn.

211 I. P. C. See *Chhedi Upadhya v. R.*, (1922) 72 I. C. 76 : s. c. 24 Cr. L. J. 316 (Pat).

391. In *Ali Ahmad v. R.*, (1921) 62 I. C. 327 : s. c. 22 Cr. L. J. 503 (Lah), the accused, a post peon, made a report to the superior officer that he had been beaten and obstructed in the discharge of his duties by a Patwari. During the course of inquiries he withdrew the report, saying that it was false. Upon this he was charged under sec. 182 I. P. C., and convicted. At his trial the accused stated that his report was absolutely true and that he had been induced by the Sub-Inspector of Police to withdraw it. The High Court held that sec. 182 was not at all applicable to the case. *Moti Sagar, J.*, said : "It has been held in *Fateh Khan v. R.*, 35 P. R. 1890 Cr., that 'it is not sufficient to find for a conviction under this section that the accused person has given information which *he did not believe to be true, but it is necessary that it should be found positively that he knew or believed the information to be false.*' There is no evidence in this case that the accused gave the information knowing it to be false. The District Magistrate and the Tahsildar before whom the case was originally pending have both found that there was a dispute between the accused and Patwari, and this lends support to the contention of the petitioner that he did not make an absolutely false report. The accused can only be expected to show upon what facts within his knowledge the information given was founded, but as again held in *Fateh Khan v. R.*, he *certainly is not bound* to show that the information given was in fact true."

392. In the case of *Rayan Kutti v. R.*, (1903) I. L. R. 26 Mad. 640 (see *ante*, ¶¶ 60 and 65), a petition was presented with the object (as the High Court held from its terms) of bringing to knowledge of the authorities certain matters regarding which the petitioner had received information, in order that there might not be repetition of an alleged tutoring of witnesses, and not with the object that the authorities should institute criminal proceedings, the High Court

held that no offence under sec. 211 was committed as the petition did not amount to a "charge" under sec. 211. The High Court said, (p. 644), "There remains the question, whether we can, in exercise of the powers conferred by sec. 237 of the Code of Criminal Procedure, convict the accused of an offence under sec. 182 of the Indian Penal Code. To constitute an offence under that section it must be shown that the person giving the information knew or believed it to be false or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. It cannot be said that this has been shown in the present case. The fact that the information is shown to be false does not cast upon the party who is charged with an offence under this section, the burden of showing that when he made it he believed it to be true. The prosecution must make out that the circumstances were such that the only reasonable inference was that he must have known or believed it to be false."

\* When the information is proved to be false it lies on the prosecution to show that the accused knew or believed it to be false.

393. If there are circumstances in the case from which the Court is of opinion that it is not unlikely that at the time the information was given the accused believed the information to be true, the accused must be acquitted.

In *Brindaban v. R.*, (1919) 20 Cr. L. J. 791 : s. c. 53 I. C. 695 (O), proceedings were initiated against a person under sec. 182 for giving false information of a threatened breach of a peace, it was held that as pointed out in *R. v. Ramchandra*, (1906) I. L. R. 31 Bom. 204, it is necessary for the prosecution to prove not only the absence of a reasonable and probable cause for giving the information but a positive knowledge or belief of the falsity of the information given.

In the case of *U Htin Gyaw v. R.*, (1926) I. L. R. 5 Rang. 26 : s. c. 28 Cr. L. J. 433, 437, it was held that the wordings of sec. 162 does not prohibit the use of statements made to the Police in the course of an investigation at the time when the

Admissibility of statements under sec. 162, Cr. P. C., in an inquiry under sec. 476, Cr. P. C., or trial in false cases.

statement was made. For, the wording of sec. 162 does not prohibit the use of statements made to the Police in the course of an investigation under Chapter XIV, in cases where the offence, which is the subject-matter of the inquiry, *was not under investigation* at the time when the statement was made, and that, therefore, *the provisions of sec. 162 of the Code cannot be read as prohibiting the use of statements, made to the Police in the course of the investigation of other offences*, in the proceedings under sec. 476 of the Code in respect of alleged offences which were not under investigation at the time when the statements to the Police were made.

So statements under sec. 161, Cr. P. C., if not inculpatory, are admissible against an accused person charged under secs. 182 or 211 I. P. C.

If on information laid by *A* a criminal proceeding is started against *B* and in the course of investigation into that case *A* makes a statement to a Police Officer, in a subsequent prosecution of *A* under secs. 193, 192 and 211, I. P. C., that statement is admissible as evidence of the *res gestæ* for which *A* is prosecuted. It is not excluded by sec. 162 of the Criminal Procedure Code. See the case of *Jogesh Chandra v. Surendra Mohan*, (1930) 35 C. W. N. 838.

*In re Kodangi*, (1931) 33 Cr. L. J. 173: s. c. A. I. R. 1932 Mad. 24, the appellant apparently was charged on two counts. Firstly, he sent a false telegram to the District Superintendent of Police, informing him that a murder had been committed by certain persons; and secondly, that during the investigation under sec. 174, Cr. P. C., he made a statement to the same effect as disclosed in the telegram. There was no proof that the appellant sent the incriminatory telegram, beyond the the Circle Inspector's statement that he confessed to so doing. It was held by the High Court that the prosecution cannot rely upon an admission made by an accused person to the Police without other proof and, even if it could so rely, *it would be bound to take the admission as a whole and statements*

Confession before  
Police—not during  
investigation, — is  
admissible.

made in the course of an investigation under Chapter XIV, Cr. P. C., are not "charges" as contemplated by sec. 211 I. P. C. Regarding the incriminating statement the High Court observed, "This statement is within the mischief of sec. 25, Indian Evidence Act, and should not have been proved. No doubt it is one of the ridiculous anomalies involved in these sections, but the law is quite clear. Mr. Bewes (the Public Prosecutor for Crown) argues that the confession in sec. 25 must be a confession of the crime which the Police Officer is at the moment investigating and otherwise it is provable, which is obvious common sense but unfortunately not law. *Section 25 is absolute.* If A says to a Police Officer, I noticed B murdering X while I was murdering Z, his confession that he murdered Z cannot be proved."

"No doubt the appellant admits that he sent the telegram, but the prosecution cannot rely upon his admission without other proof, and even if it could so rely, would be bound to take the admission as a whole. The appellant says that he is illiterate and ignorant of English, and what was telegraphed is not what he told the writer."

"Then it is sought to fortify the charge by proving what the appellant said at the inquest. It has always been held that statements made in the course of an investigation under Chapter XIV, Cr. P. C., are not "charges" as contemplated by sec. 211. *Cf. Weir* Vol. I, page 193, and *Ramana Goud v. R.*, (1908) I. L. R. 31 Mad. 506." As to whether statements made in the course of an investigation under Chapter XIV, Cr. P. C., are "charges" or not, see *ante* ¶ 77, p. 57.

### E.—Trial.—Onus.

394. There is no presumption against the accused on account of his failure to protest against an adverse police report or to claim a trial of his case.

No presumption against the accused for failure to protest against an adverse police report.

In the Full Bench case of *R. v. Sham Lal*, (1887) I. L. R., 14 Cal. 707, 720, Norris, J., said, "Now it does not at all

follow that because a person has charged another to the Police with, say, theft, and has not applied to a Magistrate to take cognizance of the charge after the Police have found it false, and in that sense has abandoned it, that he thereby admits that the charge was made with intent to injure, or that it was made maliciously. He may have made the charge, as in this case, upon the information of a third person, and during the progress of the police investigation he may have satisfied himself that his informant was mistaken, and the charge, therefore, in the sense of being untrue, false. Or again, having made the charge on his own responsibility, he may be satisfied after the police investigation, that it is a case of mistaken identity, or that the person whom he had charged took the article, said to have been stolen under a *bona fide* claim of right."

"Therefore it by no means follows from the failure of a person to apply to a Magistrate to take cognizance of a charge which has been found by the Police to be false that there need be grounds for preferring a charge against him under sec. 211, Indian Penal Code, of making a false charge."

395. For a conviction under sec. 211, I. P. C., it is necessary to establish that the accused knew that there was just or lawful ground for the charge. *Gopal Kaur v. R.*, (1920) 22 Cr. L. J. 333 (Cal). (For the facts of the case, see *ante* ¶ 382, p 280 ). The High Court in this case remarked, "The Magistrate seems to have dealt with the matter as if he thought that all that was required was that the petitioner had good grounds for making the charge. That, of course, is looking at the matter from a wrong point of view. For a conviction under sec. 211, I. P. C., it is necessary to establish that the accused knew that there was no just or lawful ground for the charge."

396. Sometimes complaints are made to public servants by telegrams. When such a telegram is found to be false either by judicial inquiry or by

When complaints which are false, are made by a telegram.



police investigation and the public servant complains, in order to bring home the charge under sec. 182 or 211, it is necessary to prove that the accused sent the complaint (telegram) for transmission to the public servant.

Section 88 of the Indian Evidence Act lays down :—

“The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message Presumption as to telegraphic-messages. delivered for transmission at the office from which the message purports to be sent ; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

The original telegram is generally destroyed after three months from the date of the transmission. The original telegram should, therefore, be secured without delay from the Telegraph Department in order to prove that the message was sent by or at the instance of the accused as there is no presumption as to the person by whom such message was delivered for transmission.

397. In a case under sec. 211, the accused is entitled False charge based on hearsay information. to show and should be allowed to show the information on which he acted. The Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they are known to be such to the accused *when* the charge was made by him. *R. v. Navalmal valad Umedmal*, (1866) 3 Bom. H. C. R. 16.

In the case cited above the accused was convicted under sec. 211 ; he filed a petition to the Fouzdar, stating that he was informed by two persons that his father was killed by the Police *patil*. The witnesses were called before the trial Court who stated that they had seen the *patii* assault the deceased. They were disbelieved by the Assistant Sessions Judge. In dealing with the question whether there was no just or lawful ground for such charge, Couch, C. J.,

said, "Whether there was a ground or not must depend on whether or not he was told what he says he was. It is possible that the witnesses Nos. 11 and 12 may not have seen what they told the prisoner they had seen ; yet, if they told him, he would have ground for taking proceedings against the *patil*. \* \* \* In the present case we cannot satisfactorily come to the conclusion that the evidence adduced by the prisoner was to his knowledge untrue, when he put it forward ; or that he was not justified in asking for an inquiry regarding the cause of his father's death."

In the case of *Mirza Hassan Mirza v. Mahbubun*, (1913) 18 C. W. N. 391, the petitioner was convicted under sec. 211 of having laid a false information of theft before the Police and the petitioner's case was that he had heard from his wife that the persons named in the information had disappeared and the properties named therein were missing and *his information was based on this statement of the wife* and the prosecution did not prove that there was no such statement by the wife who was not examined as a witness for the prosecution nor did the petitioner examined her as a witness on his side ; the High Court held that the duty of the prosecution in a case under sec. 211, I. P. C., is to prove by satisfactory evidence that the charge was wilfully false to the knowledge of the maker of the charge, and also decided that it is for the prosecution to establish their case and if they failed to supply the proof which is required to secure the conviction of the accused, the failure on the part of the latter to examine any particular witness or witnesses will not imply the guilt of the accused ; and that the case against the petitioner being that no theft took place, the obligation of proving it rested on the prosecution. In this case the prosecution not having established that there was as a matter of fact no theft and the petitioner knew that there was no theft, the High Court set aside the conviction and sentence under sec. 211 I. P. C.

Duty of the prosecution in sec. 211, I. P. C., case.

398. In a case under sec. 182 or sec. 211, it is necessary to prove the falsity of the complaint by producing proper evidence. A decision in a previous case that the offence reported to be false is not evidence in the case. In *R. v. Ram Dass Boistub*, (1869) 11 W. R. Cr. 35, the Deputy Magistrate having disposed of a theft case which he regarded as false, directed proceedings to be taken against the complainant and his witnesses, and also another man for having promoted the false charge and convicted them. The High Court quashed the conviction and pointed out that it was an error to rely merely for this purpose on this decision in the theft case and that the prosecution was bound to prove the falsity of the complaint of theft in the presence of the accused.

The judgment in the case in which the complaint was found false is not admissible in evidence on the grounds,—(1) that technically speaking, it is not between the same parties, in one case the King Emperor is against the person informed against and the informant is a witness; in the other case the King Emperor is against the informant and the person informed against is a witness in the case. (2) That the points for determination are not the same in both the cases—in one case the question is whether the information is true, in the other case, whether the information is false. Therefore the burden of proof rests in each case on different shoulders. It is not necessary in one case to find more than that the charge of theft or other offence against the accused is not proved. When that Court goes further and pronounces that the case is false and directs a prosecution it is no legal decision on a question of falsity of the case, but merely an opinion, which although he is entitled to give expression to, ought no more to have been but in evidence on the charge under sec. 182 or 211 than the opinion of a Magistrate who commits a prisoner to take his trial upon a criminal charge. See the case of *Gogun Chunder Ghos v. R.*, (1880) L. L. R. 6 Cal. 247.

399. In a case under sec. 211 where there is no specific charge in the first information against any body but during the investigation the informant charges specially against definite person or persons, the statement of the complainant is not admissible in evidence under sec. 162 Cr. P. C. *In re Mallala Obiah*, (1917) 42 I. C. 998 : s. c. 19 Cr. L. J. 38, see *ante* ¶ 78, p. 58. As to admissibility of statements under sec. 161, Cr. P. C., in false cases, see *ante* ¶ 393.

400. "It is frequently of the highest importance to investigate the motives of the complainant, and to ascertain whether they are such as may have led to the institution of a false charge. The just course of inquiry in such circumstances was thus laid down by Mr. Justice Cresswell. 'The Jury', he said, 'had nothing to do with the prosecutor's motives except so far as if it should appear that there was any motive for the prosecution of an unworthy character made out, it would then be their duty to watch such a case much more narrowly than one in which no such motive appeared. Even in that case, however, if the evidence satisfied them of the truth of the charge, they had no right to look at the motives that had induced the prosecutor to prefer it, but were bound to say that the accused person was guilty.'" (Will's Circumstantial Evidence, p. 256, 6th Edition).

401. In *R. v. Gopal Dhanuk*, (1881) I. L. R. 7 Cal. 96, a statement that the prisoner was charged under sec. 211 I. P. C., with having brought a false charge with intent to injure, by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under sec. 304-A. At the trial before the Sessions Judge the prisoner stated that the original complaint made by him to the Police was false and that *he made it unthinkingly*. The Sessions Judge treated the statement as a plea of guilty, and sentenced the prisoner to eight months' rigorous imprisonment. The High Court pointed out that the prisoner did not admit one very

important element in an offence under sec. 211, *viz.*, the intention to injure another. It was held that the *admission of having made a false complaint does not amount to a plea of guilty.*

#### F.—Trial.—Charge to the Jury.

402. The question of reasonable or probable cause, is, if the case is tried by a Judge with a jury, then it is for the Judge and not for the jury to decide it. In *Pestonji Muncherji v. The Queen Insurance Company*, (1900) L. L. R. 25 Bom. 332, the Privy Council remarked, "According to English Law, it is for the Judge and not for the jury to determine what is reasonable and probable cause in an action for malicious prosecution. The jury finds the facts. The Judge draws the proper inference from the findings of the jury. In that sense the question is a question of law. But where the case is tried without a jury there is really nothing but a question of fact and a question of fact to be determined by one and the same person."

403. In a case under sec. 211, the proper question to leave to the jury would be that unless they believe that the prisoner knew that he had no just or lawful ground for instituting the proceeding, they must acquit him. *R. v. Pran Kissen Bid*, (1866) 6 W. R. Cr. 15.

In *Tomij v. R.*, (1897) 1 C. W. N. 301, the charge concluded with these words:—"I now leave the case in your hands. If you believe the charge of dacoity to be false, then you should find the prisoner guilty under sec. 211, Indian Penal Code, otherwise, you should acquit him." It was held that the charge was defective and erroneous. It was further held that the Judge was in error when he did not put before the jury all the elements which constitute the offence under sec. 211. I. P. C.

It was also held in the above case that the Judge should, in the operative part of the charge, instead of

directing as he did, have prominently placed before the jury, one of the most essential elements of the charge under sec. 211, namely, that in instituting the false charge of dacoity there was no just or lawful ground for the charge, "and the jury should not have been asked to say whether the charge was false and whether in instituting that charge there was no just or lawful ground.

### G.—Trial.—Punishment.

404. A person convicted under the second clause of sec. 211, I. P. C., should be sentenced to imprisonment, with or without fine, and not to fine alone. Punishment under second clause of sec. 211, I. P. C. A legal sentence including imprisonment should be passed. See *R. v. Rama bin Rabbaji*, (1863) 1 Bom. H. C. R. 34.

As to the applicability of the second part of sec. 211, I. P. C., in a case in which an information is given before the Police Officer, see *ante* p. 69 *et seq.*

It may be pointed out here that in a recent case of *R. v. Jhori*, (1930) 136 I. C. 277 : s. c. 35 Cr. L. J. 256, the Allahabad High Court has held the same view as taken in the Full Bench case of *Karim Bukshi v. R.*, (see *ante* ¶ 96, p. 71), and dissented from the views of the previous Allahabad cases.

### H.—Trial.—Abetment.

405. There being no abetment of an offence after it has been committed, a person cannot be convicted of abetting the offence of instituting a false charge, on evidence which shows only that he gave evidence in support of a charge found to be false. Prosecution of witnesses for abetment of bringing false charge. *In re Jugut Mohini Dassee*, (1881) 10 C. L. R. 4; see also *R. v. Paun Pundah*, (1872) 18 W. R. Cr. 28, *sub nomine* *R. v. Ram Panda*, (1872) 9 B. L. R. App. 16.

406. In *Ram Logan Lal v. R.*, (1903) 7 C. W. N. 556, Abetment.—advice with knowledge.—instigation. in the course of a quarrel between Ram Logan and Bandhan, Topsy who was sitting near, took up Ram Logan's part and struck Bandhan who fled. Ram

Logan then directed Topsi to lodge an information at the thana to the effect that Bandhan has stolen a bag of money of Topsi's and made off with it. Topsi accordingly laid an information at the thana. The story was disbelieved and subsequently both Ram Logan and Topsi were convicted under sec. 211 I. P. C. It was contended before the High Court that Ram Logan did nothing but gave Topsi a piece of advice, the conviction was not justifiable. It was held that as Ram Logan was present at the time when the theft was alleged to have been committed, the story, if false, was false to Ram Logan's knowledge; and that having made Topsi lodge an information which he knew to be false, Ram Logan was guilty of abetting an offence under sec. 211, I. P. C. As there were no ground for supposing that the accused had been prejudiced by the conviction under sec. 211 I. P. C., the High Court maintained the sentence without altering the conviction.

In this case it was argued on behalf of Ram Logan that he did nothing more than give Topsi a piece of advice as to his conduct, and that if Topsi laid an information at the Police Station that was false it is Topsi and Topsi only who is responsible. The High Court remarked that "the argument would have had considerable weight if there had been any reason to suppose that Topsi had stated to Ram Logan the facts which were not within Ram Logan's knowledge and had asked his advice how to act."

407. When it is found on facts that the person informed against is guilty of an offence but not exactly on the facts as stated by the accuser, the accuser should not be convicted under sec. 211 of the Indian Penal Code. See *R. v. Mindai Lal* (1883) A. W. N. 39, ante ¶ 105, p. 78.

Acquittal when the charge is true but the facts in the complaint are not strictly proved true.

For the procedure of inquiring into the offence of abetment and joint trial, see ante ¶ 54, p. 38 and ¶ 262 et seq., p. 184.

## CHAPTER XV.

**The powers of superior Courts and officers in regard to complaints.—Appeal.—Revision.—Quashing of commitment.—Transfer.**

**A.—Complaint by a public servant in cases under secs. 182 and 211 I. P. C.**

408. As noticed before, not only the public servant concerned but also his superior may complain of an offence under sec. 182 I. P. C. ; and as regards an offence under sec. 211 I. P. C., when committed in or in relation to any proceeding in any Court, not only such Court but also the Court to which such Court is subordinate, is competent to complain.

It has also been noticed before who are such superior public servants and superior Courts. (See *ante* ¶ 196 *et seq.*)

409. In complaints by public servants, sub-section (5) of sec. 195, Cr. P. C., *empowers the superior officer to order the withdrawal of the complaint.* In case he does so, he shall according to the provisions of the above section forward a copy of such order to the Court, and upon receipt thereof, by the Court, no further proceeding shall be taken on the complaint.

Where a complaint has been made by a public servant under sec. 195, sub-section (1), clause (a), any authority to which such public servant is subordinate may order the withdrawal of the complaint under sub-section (5) of sec. 195 of the Code of Criminal Procedure. Thus it follows clearly that a case under sec. 182, I. P. C., may be withdrawn but a case under sec. 211, I. P. C., cannot be withdrawn by the superior public servant. For, sub-section (5) of sec. 195 applies only where the complaint has been made by a public servant and not by a Court and that is to say for an offence under

No application of sub-sec. (5) of 195 Cr. P. C., in a case under sec. 211, I.P.C.



sub-section (1) cl. (a) which includes an offence under sec. 182.

So, where a Special Magistrate complains of an offence under sec. 211 I. P. C., committed before it the complaint is made under clause (b) of sub-section (1) of sec. 195 ; and consequently sub-section (5) does not apply and the District Magistrate has not the power to order the withdrawal of the above complaint. See *Ram Prasad v. R.*, (1927) 28 Cr. L. J. 543 ; s. c. I. L. R. 49 All. 752.

410. If a Sub-Divisional Officer makes a complaint for disobedience of an order under sec. 144 Cr. P. C., his case comes under cl. (c) of sub-section (1), and he in such cases complains as a public officer and not as a Court. An application for withdrawal of such a complaint must, therefore, be filed before the District Magistrate, as in such a case the Sub-Divisional Officer is sub-ordinate to the District Magistrate and not to the Sessions Judge. See the case of *Maini Misser v. R.*, (1926) I. L. R. 6 Pat. 39 ; s. c. 28 Cr. L. J. 353, 100 I. C. 961. See *post* ¶129, p. 104.

As to whether a complaint by a Police Officer can be withdrawn by the District Magistrate, see *ante* ¶133, p. 106.

411. Grounds of withdrawal would be among others :—

(a) want of jurisdiction of the public servant to start the case ;

Grounds of withdrawal.

(b) pendency of a *naraji* petition ;

(c) circumstances already mentioned before, in which a prosecution should not have been started ;

(d) want of reasonable probability of the case being ended in conviction.

B.—Superior Court may complain under sec. 211, I. P. C., where subordinate Court has omitted to do so.

412. If a particular Court has neither made a complaint under sec. 476 in respect of offences under sec. 211 nor rejected an application for the making of such complaint, the superior Court is empowered to make such complaint, and in such a case provisions of sec. 476-A shall apply. Formerly

there was a conflict of opinion as to whether a superior Court can take action in such cases. The Legislature by enacting sec. 476-A has made the matter set at rest. The section 476-A provides :—

“The power conferred on Civil, Revenue and Criminal Courts by section 476, sub-section (1) may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), in any case in which such former Court has neither made a complaint under section 476 in respect of such offence nor rejected an application for the making of such complaint; and where the superior Court makes such complaint, the provisions of section 476 shall apply accordingly.”

### C.—Appeal.

413. If a subordinate Court instead of omitting to complain, has refused to complain, an appeal lies against such <sup>Appeal,—where</sup> refusal and the superior Court, as an Appellate Court can under sec. 476-B make a complaint. Section 476-B. provides :—

“Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under section 476 or section 476-A, or against whom such a complaint has <sup>Appeals.</sup> been made, may appeal to the Court to which such former Court is subordinate within the meaning of section 195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under section 476, and if it makes such complaint, the provisions of that section shall apply accordingly.”

Section 476-B gives the right of appeal to the aggrieved

party, both when the lower Court makes, as well as when it refuses to make a complaint.

**413-A.** The words "or against whom such a complaint has been made" in sec. 476-B, mean that the right of appeal is given to any person against whom a complaint has *actually* been made. The nature of the complaint is referred to or defined by the use of the word "such" which clearly relates back to the words, "complaint under sec. 476 or 476-A." Per Broadway, J., in the case of *Thiraj v. R.*, (1929) 30 Cr. L. J. 1019.

Now the question is whether sec. 476-B of the Code of Criminal Procedure gives a right of appeal to the person against whom a Court files a complaint at its own instance and not on some body's application.

In the case of *Salto v. R.*, (1908) 113 L. C. 537 : s. c. 30 Cr. L. J. 163, the Lahore High Court held that sec. 476-B, Cr. P. C., does not give a right of appeal to a person against whom a Court files a complaint at its own instance and not on the application of some other person.

But later on in the case of *Thiraj v. R.*, (1929) 119 L. C. 265 : s. c. 30 Cr. L. J. 1019 (Lah), it was held that sec. 476-B, Cr. P. C., gives a right of appeal to a person against whom a complaint has been made by a Court acting under the provisions of sec. 476 or 476-A of the Code, even when the Court has acted *suo motu* and not on the application of some interested person. See also the cases of *Fitzholmes v. R.*, post ¶ 439, and *Prabhu Dayal v. R.*, (1930) 12 Lah. L. J. 29 : s. c. 32 Cr. L. J. 20.

The ruling in *Salto's* case mentioned above decided by a single Judge has been also dissented from by the Madras High Court in the case of *Namberumal Chetty v. Nainiappa Mudali*, (1930) 32 Cr. L. J. 200 : s. c. 59 M. L. J. 850, decided by the two Judges of the Madras High Court in which it was held that an appeal lies under sec. 476-B, Cr. P. C., against

an order passed by a Court making a complaint under sec. 476, Cr. P.C., even where the order is passed *suo motu* and not on the application of any person.

In delivering the Judgment the High Court gave the following reasons for dissenting from the case of *Satto* ;—  
 “He (the Judge of the Lahore High Court) appears to read the words in that section ‘such a complaint’ as meaning not merely a complaint under sec. 476 or 476-A but, further, a complaint on an application by some person ; but we are of opinion that any analogy which is to be drawn between the terms of the present sections and ‘those’ of the corresponding sections of the old Code is likely to be misleading inasmuch as the procedure has been radically altered and whereas, under the old Code, a Court should give sanction to prosecute and that sanction to prosecute on application could be made the subject of an appeal, all that has been swept away and it is for the Court itself in all cases, whether of its own accord or on application, to make a complaint. We cannot see accordingly why the applicability of an order should depend upon the special circumstance of an application having been made ; nor do we think that the terms of the section itself support that view.”

414. The right of appeal is restricted to offences referred to in sec. 195, sub-sec. (1), cl. (b) or (c), and does not exist in the case of an offence referred to in cl. (a) of sub-sec. (1) of sec. 195, Cr. P. C., which

includes an offence under sec. 182 I. P. C. Therefore, where a District Judge on an appeal against an order of the subordinate Court to make a complaint, made a complaint under sec. 182, it was held that a further appeal did not lie to the High Court, but by sub-sec. (5) of sec. 195 Cr. P. C., the High Court as the superior authority over the District Judge had the power to withdraw the complaint, (although on the facts of the particular case it did not do so). *Brijendra Nath v. R.*, (1927) 102 I. C. 433 : s. c. 28 Cr. L. J. 547 (All).

There lies no appeal when a complaint under sec. 182 I. P. C., is withdrawn by the superior authority under sub-sec. (5) of sec. 195 Cr. P. C. See the case of *Kantir Missir v. R.*, (1929) 30 Cr. L. J. 710 : s. c. 117 I. C. 37 (Pat).

Where the District Magistrate orders the withdrawal of a complaint made by a Police Officer, the District Magistrate exercises jurisdiction administratively and his order is not open to interference by a judicial tribunal.

When an order of commitment is made by Civil or Revenue Courts under sec. 478 the Code of Criminal Procedure does not permit an appeal against such an order. See *R. v. Rameshwar Lal*, (1927) I. L. R. 49, All. 898, ante ¶ 281-D, p. 201 and also *Lqchhman Prasad Joshi v. R.*, (1929) 124 I. C. 364 : s. c. 31 Cr. L. J. 679, 680 (Oudh).

415. An order passed by the Court of appeal making or refusing to make a complaint is not open to further appeal ; as sec. 404, Cr. P. C., restricts appeals to those cases as are provided for by the Code of Criminal Procedure or by any other law in force and sec. 476-B gives a right of appeal only when a Court has made or refused to make a complaint under sec. 476-A, and neither of these sections relate to a complaint made by an Appellate Court. See *Muhammad Idris v. R.*, (1924) I. L. R. 6 Lah. 56 : *Ma On Khin v. N. K. H Firm*, (1927) I. L. R. 5 Rang. 523 : s. c. 28 Cr. L. J. 937 ; *Somabhai v. Adilbhai*, (1924) I. L. R. 48 Bom. 401 ; *Ahamadar Rahman v. Dwip Chand*, (1927) 32 C. W. N. 164 : s. c. 47 C. L. J. 277 ; and *Mohim Chandra Nalhi v. R.*, (1928) 33 C. W. N. 285 : s. c. I L. R. 56 Cal. 824.

416. It was pointed out in *Ranjit Narayan v. Ram Bahadur*, (1926) I. L. R. 5 Pat. 262, 275 : s. c. 27 Cr. L. J. 641, that in matters connected with Civil Courts an appeal lies to the High Court from an order passed by the District Judge in the following cases :—

Appeal from the judgment of the District Judge.

(a) where a Munsiff has refused an application made to him under sec. 476 to make a complaint, there has been an appeal to the District Judge and the District Judge, disagreeing with the Munsiff, has made a complaint ;

(b) where under sec. 476-A (the Munsiff having taken no action *suo motu* and not having been asked to take any action), the District Judge, (i) on application to him makes a complaint or (ii) on application to him has refused to make a complaint.

In no other case an appeal lies to the High Court from the order passed by a District Judge as an Appellate Court. The same procedure would apply to any other chain of three Courts (contemplated by sec. 476) of ascending jurisdiction.

But in the case of *Bismillahi Khan v. Shakir Ali*, (1928) 115 L. C. 812 : s. c. 30 Cr. L. J. 382 (O), it has been held that a District Judge has no jurisdiction to transfer to a Subordinate Judge an appeal filed before him under sec. 476-B, Criminal Procedure Code, from an order by a Munsiff refusing to make a complaint. Under sec. 476-B, Cr. P. C., where the Court of first instance consents or refuses to prosecute, whether the Appellate Court upholds or reverses its order, there is one appeal and one appeal only. An appeal can lie to the High Court only where the original order has been passed by a Court from which the appeal ordinarily lies direct to the High Court. The Oudh Chief Court said, "The right to appeal is created by the Legislature. *The Legislature grants one appeal only and no second appeal lies.*" This seems to be the correct view. This case has followed the case of *Muhammad Idris v. R.*, see ante ¶ 415; and dissented from *Ranjit Narayan Singh's* case, (*supra*).

The same view has also been taken in the case of *Chinai v. Mukundram*, (1929) 119 L. C. 703 : s. c. 30 Cr. L. J. 1098, (Nag), which followed the cases of *Somabhai Vallabhshai*, *Muhammad Idris* and *Ma On Khin*.

The Bengal, Agra and Assam Civil Courts Act, 1887, provides that appeals from a decree or order of a Munsiff shall lie to the District Judge, but the said Act contains a provision that the High Court may direct by notification that appeals lying to the District Judge from Munsiffs shall be preferred to any Subordinate Judge and the Government in pursuance of this provision published a notification that appeals lying to the District Judge of Manbhum from the District of Sambalpur should be preferred to the Subordinate Judge of Sambalpur, it was held in the case of *Ramchandra Padhi v. R.*, (1928) 1 L. J. R. 8 Pal. 428 : s. c. 30 Cr. L. J. 834, that the Court of the Subordinate Judge of Sambalpur was the Court to which "appeals ordinarily lay" from the District Munsiffs in the District of Sambalpur, within the meaning of sec. 195 (3), Cr. P. C., and was, therefore, the superior Court which was empowered under sec. 476-B of the Code to make a complaint which the Munsiffs might have made. See also the case of *Sudarsan Behara v. R.*, (1926) 98 L. C. 111 : s. c. 27 Cr. L. J. 1263 (Pat).

In the case of *Ratan Lal v. Hafiz Abdul Hai*, (1930) 31 Cr. L. J. 898 : s. c. 125 L. C. 753 (All), it was held that an appeal lies to the Civil Court from an order under sec. 476, Cr. P. C., made by an Assistant Collector in a suit under the Agra Tenancy Act, even though the valuation of the suit is less than Rs. 200 and decree passed in the suit is not appealable to the Civil Court.

In the same case it was also held that where an appeal under sec. 476-B, Cr. P. C., has been validly filed in the Court of an Additional District Judge, the District Judge has power under sec. 24, Civil Procedure Code, to transfer the case to a Temporary Additional District Judge.

It was further held in the above case that where a District Judge has assigned the function of receiving and hearing revenue appeals may validly be filed in the Court of

the Additional District Judge. In the course of the judgment the High Court on this point observed, "If the appeal was validly filed in the Court of the Additional District Judge, the District Judge of Meerut had authority under sec. 24 of the Code of Civil Procedure to transfer the appeal to the Court of the Temporary Additional District Judge."

"An appeal is allowed under sec. 476-B in every case in which a Civil, Revenue or Criminal Court has made a complaint against any person. When such a right is given it must be presumed that the Court exercising such right is properly indicated in the provisions of sec. 195 (3) of the Code of Criminal Procedure. According to those provisions, where appeals lie to a Civil and also to a Revenue Court, such Courts shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed. In the present case the suit was one for recovery of Revenue under the Tenancy Act, and as appeals from decrees in such suits lie to the Civil Court the Assistant Collector would be deemed to be subordinate to the Civil Court for the purposes of this particular case. That was allowed by the applicant's Counsel. His objection was that the suit was one, in which no appeal lay to any Court, the valuation of the suit being less than Rs. 200. The determination of the superior Court, however, is not confined to the decrees which are appealable. What is stated is that a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees. If this Court passed any appealable decrees in matters relating to the recovery of arrears of revenue appeals from such decrees would lie to the Civil Court, and, therefore, the Court under sec. 476-B would be subordinate to the Civil Court when a complaint is filed in any suit of this nature whether a decree therefrom be appealable or not. I feel no difficulty in interpreting the words of cl. (3) of sec.



195 which must be construed in a way to permit appeals in every case under sec. 476-B".

"It was pointed out that the provisions of sec. 21 (3) of the Bengal, N. W. P., and Assam Civil Courts Act (XII of 1887) refer specifically to appeals from Subordinate Judges and Munsifs, and, therefore, the District Judge cannot assign the receiving and hearing of Revenue appeals to an Additional District Judge. This may be conceded so far as the provisions of sec. 21 of the Act are concerned. There is, however, another provision contained in sec. 8 of the same Act to the effect that Additional Judges appointed to any District shall discharge any of the functions of the District Judge which the District Judge may assign to them, and, in the discharge of those functions they shall exercise the same powers as the District Judge. The function of receiving and hearing revenue appeals has been assigned by the District Judge to the Additional District Judge of Muzaffarnagar with respect to all revenue appeals of the Muzaffarnagar District. I am, therefore, of opinion that the appeal was rightly filed in the Court of the Additional District Judge and it was not necessary that it should have been filed in the Court of the District Judge of Meerut and specifically transferred to the Court of the Additional District Judge."

A Joint Magistrate, empowered under sec. 407 (2), Cr. P. C., to hear appeals from Sub-Divisional Magistrates, is not a Court to which *appeals ordinarily lie* from such Magistrate within the meaning of sec. 195 (3), Cr. P. C., and has no power, to make a complaint under sec. 476-B of the Code, on an appeal from an order of a Sub-Divisional Magistrate refusing to make a complaint. See the case of *Mohim Chandra Nath v. R.*, (1928) 1 L. R. 56 Cal. 824 : s. c. 33 C. W. N. 285 ; 30 Cr. L. J. 658.

The Full Bench of the Nagpur Judicial Commissioner's Court in the case of *Pilalal v. R.*, (1928) 116 I. C. 77 : s. c. 30 Cr. L. J. 550, Kinkhede, A. C. J., agreeing with the views of other

Appeal.—Proper forum.—Whether District Magistrate subordinate to Sessions Judge.

Judges observed, "If the enumeration of Courts given in sec. 6, Cr. P. C., is exhaustive, as I think, it is, it necessarily follows that there is no such Court as a Court of District Magistrate. But all the same the powers, which the District Magistrate exercises, are really powers which vest in him as a First Class Magistrate supplemented with such others, as his appointment under sec. 10 or sec. 30, Cr. P. C., clothes him with. His decisions in appeal are principally as a Court of First Class Magistrate, but the appeal against his decision may ordinarily lie under sec. 408, Cr. P. C., to the Sessions Court or to the High Court according to the duration of imprisonment for which he may pass the sentence (unless it is one of transportation in which case the appeal will lie to this Court only). Judged by the test of the sentence which the District Magistrate may pass, the appellate forum may vary according to the period of the sentence and its nature also. *In matters of appeal, therefore, the District Magistrate is subordinate to two Courts, (1) the Sessions Court and (2) High Court. Out of the two Appellate Courts the Court of Session being of inferior jurisdiction the District Magistrate could well be regarded as subordinate to that Court for purpose of sec. 195 (3) read with secs. 476-A and 476-B, Cr. P. C."*

417. Right to appeal under sec. 476-B is a personal one.

Death of the appellant, the right does not survive.

On the death of the applicant it does not survive to his successor.

In *Nihal v. Ramji*, (1924) I. L. R. 47 All. 359 : s. c. 26 Cr. L. J. 1008, it was held that where a private person moves a Court to take action under sec. 476, Cr. P. C., but the Court refuses to take such action, and the applicant files an appeal but dies during the pendency of the appeal, the right to carry on the appeal does not survive to his legal representatives or to any body else.

In *Nasaruddin Khan v. R.*, (1926) I. L. R. 53 Cal. 827 : s. c. 28 Cr. L. J. 92, it was pointed out that the language of the section 476-B, Cr. P. C., indicates with sufficient clearness that the Court to which an appeal lies under that section

is one to which the Court making or filing the complaint is subordinate ; in other words, if it is a Civil Court which has made an order under sec. 476 of the Criminal Procedure Code, the appeal against such an order must lie to and be heard by the authority or tribunal to which such Civil Court is subordinate and the procedure governing an appeal of this description is that prescribed by the Civil Procedure Code for the hearing of an appeal. See also the case of *Surendra Nath v. Susil Kumar*, (1913) 35 C. W. N. 775.

418. In the case of *Labha Mal v. Wasawa Mal*, (1927) 106 I. C. 584 : s. c. 29 Cr. L. J. 72, it has been held that according to sec. 476-B, *notice should be sent to the parties concerned*. In an appeal against refusal to make a complaint the parties entitled to receive notice would be the accused person. But if the appeal is preferred by the person against whom the complaint is made, the opposite party is the Crown as in all other criminal cases. See on this point the case of *Rashid Muhammad Khan v. R.*, (1927) I. L. R. 8 Lah. 568 : s. c. 28 Cr. L. J. 416, in which it was held that *respondent in a criminal appeal or revision is the Crown only*.

419. In *Ram Charan v. R.*, (1925) 88 I. C. 358 : s. c. 26 Cr. L. J. 1126, the Allahabad High Court observed that the intention of the Legislature is that in appeal under sec. 476-B, Cr. P. C., the Appellate Court should re-consider the entire matter on the merits, and while allowing reasonable weight to the opinion of the Court below should nevertheless *re-consider the question of the propriety of the order appealed against, upon a complete review of the entire facts. If the Appellate Court is not satisfied, that a prima facie case has been made out, the order appealed against must be set aside*. This case has been followed by the Calcutta High Court in the case of *Jagabandhu v. Abdul Sobhan*, (1929) 124 I. C. 68 : s. c. 31 Cr. L. J. 612.

In *Manir Ahamed v. Jogesh Chandra*, (1928) I. L. R. 55 Cal. 1277, the Calcutta High Court held **Appellate Court's power to remand.** that in an appeal under sec. 476-B, Cr. P. C., the Appellate Court has *no jurisdiction to remand the case* directing the Court of first instance to file a complaint, but must do so itself.

In the case of *Surendra Nath v. Susil Kumar*, (1931) 35 C. W. N. 775, it was held otherwise. In this case an application was made under sec. 476, Cr. P. C., before a Munsif asking him to lodge a complaint and the Munsif refused to do so on the ground that the application was a belated one and on appeal to the District Judge, the District Judge remanded the case back to the Munsif for further inquiry. The matter came up before the High Court under sec. 115 of the Civil Procedure Code. The High Court held that the *District Judge had jurisdiction under Or. 41 of the Civil Procedure Code to remand the case*, and the provisions laid down in sec. 476-B, Cr. P. C., as to appeals against orders passed under sec. 476 are not exhaustive but are supplementary to Chapter XXXI of the Code, the provisions whereof are applicable to appeals under sec. 476-B. The High Court further held that even assuming that the provisions of the Civil Procedure Code did not apply, the *District Judge had power to remand the case under sec. 423, Cl. (1) (b) and (c) of the Code of Criminal Procedure*.

In the case of *Mahomed Boyatulla v. R.*, (1930) 35 C. W. N. 923, it was held that an appeal under sec. 476-B **Summary dismissal of appeal.** *may be summarily dismissed*. Such an appeal is subject to all the provisions applicable to Criminal appeals as laid down in sec. 419 and the following sections of the Code. Costello, J., observed, "The position seems to be this that until sec. 476-B was added to the Criminal Procedure Code by Act XVIII of 1923 there was no right of appeal at all against an order made under the provisions of sec. 476 and that the only remedy of an aggrieved person was to raise any question that he might

desire to raise in a proceeding in revision. Then the right of appeal having been given by sec. 476-B we think that *appeals under that section are subject to all the provisions applicable to criminal appeals as laid down in sec. 419 and the following sections.* That being so, it follows that the provisions of sec. 421, apply to appeals of this description just as to ordinary criminal appeals."

In the case of *Sami Vannia v. Periaswami*, (1927) 1 L. R. 51 Mad. 603 : s. c. 108 L. C. 638 ; 29 Cr. L. J. 445, the question arose whether the Appellate Court has no power to take additional evidence under sec. 428, Cr. P. C. Court was within its power to take additional evidence while acting under sec. 476-B, Cr. P. C. The Madras High Court, held that an Appellate Court has no such jurisdiction under sec. 476-B, Cr. P. C., to take additional evidence inasmuch as sec. 428, Cr. P. C., which empowers the Court to take additional evidence has no application to such a proceeding. For, the power to take, or call for further evidence given by sec. 428, Criminal Procedure, is expressly limited to appeals under Chapter XXXI of the Code. Section 476-B is not a part of that Chapter nor does the section itself give any power to call for further evidence. See *Krishna Reddy v. R.*, (1909) 1 L. R. 33 Mad. 90.

420. The Calcutta High Court in *Kalisadhan Addya v. Nani Lal Hazra*, (1924) 1 L. R. 52 Cal. 478, 481, observed that in a case where the discretion vested in the trying Magistrate is exercised by that Court in refusing to make an order under sec. 476, and a superior Court reverses that order of the trial Court refusing to proceed under sec. 476 of the Criminal Procedure Code, *sufficient reasons must be given* by that Court as to why he thinks, that the discretion was not properly exercised.

421. When an appeal under sec. 476-B is allowed the form of that order would be "*to direct the withdrawal of the complaint.*" See the case of *Somabhai v. Aditbhai*, (1924) 1 L. R. 48 Bom. 401.

Refusal by trial Court to make a complaint and reversal by the Appellate Court without assigning any reason.

Form of the order when an appeal is allowed.

422. An appeal under sec. 476-B of the Code of Criminal Procedure against an order of a Civil Court subordinate to the District Judge preferred to the District Judge may be transferred by him to some other competent Court and the latter in disposing of the appeal is competent to make a complaint if necessary. See *Lal Mahammad v. The D. I. G., C. I. D., Bengal*, (1929) 34 C. W. N. 80.

#### D.—Revisional power of Superior Courts.

423. It may be stated that it was held in *Chandi Pershad v. Abdur Rahman*, (1894) I. L. R. 22 Cal. 131, that "the High Court has power to interfere *at any stage of a case*, and when it is brought to its notice that a person has been subjected to the harassment of an illegal prosecution, it is its bounden duty to interfere."

424. The High Court has power to revise proceedings under sec. 476, Cr. P. C., when such proceedings are null and void for want of jurisdiction. See *Suryanarayana Row v. R.*, (1905) I. L. R. 29 Mad. 100.

425. It is necessary, as in all other cases, to see whether there has been any error of law, any irregularity, any abuse of, or failure to exercise judicial discretion, such as would justify interference in revision. The condition of the Court's acting under sec. 476 is its forming the opinion that there was ground for inquiring into any offence referred to in sec. 195. *The test is its opinion, and not the opinion of any superior Court*; and if it has formed a real opinion to the effect stated, it has power to act under the section, and it commits no error or irregularity in doing so, even though another Court may think the opinion erroneous. If it forms a real opinion, because, no doubt, if a case arose in which the Court acted on merely fanciful grounds, on grounds so empty, so obviously

wrong that it could not be said to have formed a serious judicial opinion at all, then the High Court would probably hold in revision that there had been no such action as section 476 contemplates. The *opinion spoken of by sec. 476*, no doubt, *is a judicial opinion founded on evidence*. If such an opinion has been formed, the High Court ought not in revision to interfere merely on the ground that it disagrees with it. See the case of *In re Alamdar Husain*, (1901) I. L. R. 23 All. 249, 251, 252. This case has been followed in the case of *in re Parshotamdas M. Shah*, (1923) 72 I. C. 359 : s. c. 24 Cr. L. J. 359 : 25 Bom. L. R. 282 (Bom).

426. The question whether a complaint should be made is a question of discretion of the lower Court and the High Court is always loath to interfere except in extraordinary cases. *Ranjit Narain v. Ram Bahadur*, (1925) 27 Cr. L. J. 641 : s. c. 94 I. C. 593 ; I. L. R. 5 Pat. 262.

427. The High Court will not ordinarily interfere in revision when the lower Appellate Court has thought fit to withdraw a complaint under sec. 476, *Somabhai v. Adilbhai*, (1924) I. L. R. 48 Bom. 401.

428. In *Befram v. R.*, (1925) I. L. R. 7 Lah. 108, the Lahore High Court also held that it is, as a general rule, inadvisable for the High Court to interfere in revision with an appellate order refusing to withdraw a complaint. In this case it was contended that the prosecutions are not likely to be successful, and that they are not in the interests of public policy. The High Court observed, "In this connection the change in the Code of Criminal Procedure effected in 1923 has to be borne in mind. Formerly when sec. 195 enabled a private person to obtain sanction to institute a prosecution under sections such as 193 and 211 of the Penal Code, and when no appeal was provided for from an order by a Magistrate under sec. 476 it was sometimes desirable for the High Courts in revision to examine the prospect of successful prosecution, because sanction was frequently used merely as a means of blackmail and orders under sec. 476 were passed

occasionally by inexperienced Magistrates. Now, however, the choice of instituting a prosecution is not placed in the hands of private persons. No prosecution can be instituted for the offences specified in sec. 195 which have been committed in or in relation to a proceeding in a Court unless the Court itself prefers a complaint, and the person who is the subject of the complaint has a definite right of appeal to a superior Court against the institution of the complaint. This being the situation, it does not seem to me to be the function of this Court, unless the circumstances are altogether outside the ordinary, to examine in revision the merits of the complaint with a view to discovering whether it is likely to result in a conviction. To do so is the task of the Magistrate before whom the complaint is laid, and there is nothing to prevent him from dismissing it without issuing process to the accused person. If this Court were in revision, to undertake an investigation into the merits of every such case as the present, it is quite possible that some findings highly prejudicial to the accused at the trial might be recorded."

"Similarly, as regards the question of a prosecution being in accordance with public policy, when a Magistrate presiding over a Court and a responsible Court of Appeal are agreed that a prosecution is necessary, unless the case is one which has peculiar features, \* \* \* \* it would be extremely difficult for this Court to declare that the prosecution is not in the interests of public policy. Furthermore, if this Court refuses, as I think it should in all ordinary cases, to enter into the merits of the complaint, an order directing the withdrawal of the complaint on the score of public policy would not appear to be in the interests of the accused person. He would be deprived of the only means available, in the shape of a trial, of clearing his character which otherwise would remain affected by the fact of the complaint having been made and endorsed by the Court of Appeal."

429. In the Full Bench case of *R. v. Syed Khan*, (1925) 1 L. R. 3 Rang. 303 : s. c. 27 Cr. L. J. 4 : 91 I. C. 36, it was



contended that sec. 476-B specially allows an appeal and that, if the High Court takes up a case of this kind, on second revision, the party concerned will be deprived of the right of appeal to it. Robinson, C. J., in delivering the judgment of the Full Bench said, "We do not think that this argument is sound. There is no question that sec. 476 gives the High Court, as a superior Court, full powers to lay a complaint in any and every case in which it appears expedient in the ends of justice to do so, and there is nothing in the Code to justify us in saying that that power and jurisdiction is taken away, because, in cases of a complaint or for its refusal to lay a complaint by some subordinate Court, an appeal from that order is allowed."

430. In *Rameshwar Marawari v. R.*, (1926) 98 I. C. 56 : s. c. 27 Cr. L. J. 1240 (Pal), it was held When prima facie case not made out. that a complaint under sec. 476, Cr. P. C., may be quashed by the High Court where it is satisfied that no *prima facie* case has been made out and there is no likelihood that if proceedings go on they will end in conviction and that the remarks made in *Ranjil Narain v. Ram Bahadur* (27 Cr. L. J. 641), *viz.*, that whether a complaint should be made is *invariably a matter of discretion*, though general in form, should be read in the light of the facts of that particular case.

431. It is not desirable that a Court should review its order refusing to make a complaint under sec. 476, Cr. P. C., inasmuch as an appeal is allowed under sec. 476-B, and the Code generally has made no provision for review. See *Ram Prasad v. R.*, (1927), I. L. R. 49 All. 752 : s. c. 28 Cr. L. J. 543. Illegality of review when an order refusing to make a complaint, is made.

432. In the case of *Piari Lal v. Sagar Mal*, (1926, I. L. R. 49 All. 230 : s. c. 27 Cr. L. J. 1130, it was held that a Sessions Judge is empowered under sec. 435, Cr. P. C., to call for the record of an order of discharge passed by a Magistrate in a case instituted Can a private person move the Sessions Judge revising the order of discharge passed by a Magistrate in an inquiry under sec. 476 ?

under sec. 476, Cr. P. C., and, if he is dissatisfied with the correctness, legality or propriety of the finding, to order a further inquiry under sec. 436, and *there is nothing to prevent a Sessions Judge from exercising this jurisdiction at the instance of a private person.* The High Court observed that "undoubtedly it is not the intention of the Legislature that a private person should be encouraged to conduct prosecutions in cases of this kind, but no consideration of that nature applies to the present case. This prosecution has been duly started and the Magistrate has passed an order of discharge which appears to the Sessions Judge to be unwarranted by the evidence. \* \* \* In every case somebody must bring the matter to the notice of the Sessions Judge, as it cannot be supposed that he is aware of all the orders of discharge passed by the Magistrate in his jurisdiction, and there is nothing in the Code to limit the persons who can bring the matter to the notice of the Sessions Judge. Thus it is immaterial how these facts were brought to the notice of the Sessions Judge in the present case," and he had ample powers to deal with the matter.

435. Proceedings of a Civil Court under sec. 476 cannot be interfered by a Criminal Bench of the High Court in revision.

The power of revision under sec. 435 is confined to the records of inferior Criminal Courts. Therefore, where an order under this section was passed by a Civil Court, the High Court can interfere only under sec. 115 of the Civil Procedure Code or sec. 15 of the High Courts Act. *R. v. Har Prasad*, (1915) 1. L. R. 40 Cal. 473 (F. B). See also the cases of *Banwari Lal v. Jhunka*, (1925) 27 Cr. L. J. 278; *R. v. Ram Narain*, (1926) 27 Cr. L. J. 1021 (All); *Abdul Haq v. Shero Ram*, A. I. R. 1927 All. 334; s. c. 28 Cr. L. J. 296; 1. L. R. 49 All. 536.

An application in revision to the High Court against an order under sec. 476 Cr. P. C., does not lie under sec. 439 of the same Code as it is not a matter connected with any

proceedings before any inferior Criminal Court within the meaning of sec. 435, Cr. P. C. If the revision application is not entertainable under sec. 439, Cr. P. C., the High Court can only interfere under sec. 115 of the Code of Civil Procedure or sec. 107 of the Government of India Act. See the case of *Purna Chandra v. Shaikh Dhalu*, (1930) 52 C. L. J. 87, which followed the Full Bench case of *R. v. Har Prasad*, (1913) I. L. R. 40 Cal. 477 : s. c. 17 C. L. J. 245. See also *Jagannath v. Rajagopalachari*, (1931) 33 Cr. L. J. 147 : s. c. 135 I. C. 515 (Pat).

434. When the Revenue Court exercises also the function of a Magistrate the High Court has no power to interfere with the orders of a Revenue Court. See *R. v. Ashraf Lal*, (1916) I. L. R. 39 All. 91.

High Court cannot interfere Revenue Court proceedings.

Where a Revenue Officer passes no order under sec. 476, Cr. P. C., either making a complaint or refusing to make a complaint but merely refuses to commit a person to the Court of Session under sec. 478, Cr. P. C., the District Magistrate has no jurisdiction to revise the Revenue Officer's order under sec. 453, Cr. P. C., and commit the person to the Court of Session. *The powers of the District Magistrate under sec. 435 and the following sections are confined to interference with Criminal Courts subordinate to himself.* See the case of *Lachhman Prasad Joshi v. R.*, (1929) 124 I. C. 364 : s. c. 51 Cr. L. J. 679 (0). See *ante* ¶ 281-E, p. 202.

435. The following order dated the 13th January 1929, has been made by the Hon'ble the Chief Justice of the Calcutta High Court :—

"Applications relating to or arising out of proceedings in any subordinate Court (whether Civil, Criminal or Revenue) under secs. 195, 476, 476-A, 476-B, 480 or 482 of the Criminal Procedure Code may be made to and disposed of by the Judges composing any Bench taking criminal business on the Appellate Side without any special order of the Chief Justice".

### E.—High Court's power to quash commitment at any stage.

436. In *R. v. Shibo Behara*, (1881) 1 L. R. 6 Cal. 584, the accused brought before the Police a charge of arson against some persons. The Police reported the charge to be a false one. The accused presented a petition to the Magistrate asking for a judicial inquiry; but this petition was not disposed of. The Magistrate, nevertheless, sanctioned for prosecution and the case was inquired by a Deputy Magistrate who committed the case to the Sessions Court for trial. Before the Sessions Judge the accused pleaded not guilty, and objected to being tried, on the ground that he had been prejudiced by the refusal to grant judicial inquiry he asked for. The Sessions Judge referred the case to the High Court to quash the commitment.

Mitter, J., said, "Whether the Judge was right or not in postponing the trial after it had once begun, I think, this Court has *the power to quash an illegal commitment at any stage of a criminal proceeding.*" The High Court held that the prosecution without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal. Maclean, J., holding the same view added, "As I am of opinion that any conviction had upon the trials under the commitments which we are asked to quash would be set aside, I think the simplest course is to set aside the proceedings at this stage".

437. When the cognizance of a case is taken on suspicion on a police report, the Magistrate's order for prosecution is liable to be set aside if the suspicion is not justified by the police report. In *Sham Lal's case* (the facts of which will appear in ¶ 140, p. 110), Petheram, C. J., said, "In the present case, in addition to these reasons which apply to all such cases, I think that the order of the Magistrate

The High Court's power to quash illegal commitment at any stage.

If suspicion is not justified in the police report, the order for prosecution should be set aside.

must be set aside, because the *suspicion is not justified by the police report on which it is founded.*"

F.—Transfer of the case under sec. 526, Cr. P. C.

438. The person on whose motion a complaint is made by a Court under sec. 476 of the Code of Criminal Procedure, is not *an interested party* within the meaning of sub-sec. 3 of sec. 526, Criminal Procedure Code, and has no *locus standi* to make an application for a transfer of the case.

The right of a person on whose motion complaint is made, whether can apply for transfer.

Previously it was open to a private person to take proceedings after obtaining sanction of the Court under sec. 195 Cr. P. C. But now the matter is left entirely in the hands of the Court to decide whether to take action and initiate the proceedings. Consequently the person on whose motion a complaint is made cannot be considered to be an "interested party" within the meaning of sec. 526 (3), Cr. P. C. See the case of *Ram Sarup v. Mohammad Mehir Dil*, (1930) 127 I. C. 152 : s. c. 31 Cr. L. J. 417-4, (Lah).

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## CHAPTER XVI.

### Limitation of Appeal.

439. According to the Limitation Act (Act IX of 1908)

**Limitation.** Art. 184, the period of limitation of an appeal

under the Code of Criminal Procedure to any Court other than a High Court is *thirty days*, and according to Art. 155 of the Limitation Act, under the same Code to a High Court except in the cases provided for by Art. 157 (appeal from an order of acquittal) the period of limitation is *sixty days* : and according to Art. 151 of the Limitation Act from a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay, Patna, Lahore and Rangoon in the exercise of its original jurisdiction, the period of limitation from the date of the decree or order is *twenty days*. In all the cases the time from which period of limitation begins to run is the date of the *sentence* or *order* appealed from.

440. The limitation of an appeal against the order of a *Civil Court* under sec. 476-B to the High Court is *sixty days* and *not ninety days* according to Art. 156 of the Limitation Act.

In *Sheo Prasad v. Sheo Bans Rai*, (1926) 93 I. C. 851 ; s. c. A. I. R. 1926 All. 211, it was held that an appeal under sec. 476-B, Cr. P. C., against an order refusing to file a complaint under sec. 195 of the same Code is governed by Art. 155 and not 156 of Sch. I to the Limitation Act. Daniels, J., in delivering the judgment observed, "The question is whether limitation is *sixty days* under Art. 155 or *ninety days* under Art. 156 of the Limitation Act. When the exact terms of Art. 155 are looked at, the question raised does not admit of doubt. Article 155 applies to any appeal to the High Court under the Criminal Procedure Code except appeals from a sentence from a death or an order of acquittal. This is clearly an

appeal under the Code of Criminal Procedure as the right of appeal is expressly conferred by sec. 476-B of that Code. The Article applicable is therefore. 155."

In *Gerimal v. Shewaram*, (1925) 27 Cr. L. J. 780 : s. c. 95 I. C. 316, it was held that an appeal is under the Criminal Procedure Code given to the appellant by sec. 476-B and it has, therefore, to be filed within 60 days. The application was filed 23 days after the period of limitation, *i. e.*, 60 days, and it was held out of time. See also *Rajani Kanta Kayal v. Bisloomoni*, (1927) 46 C. L. J. 40 : s. c. 28 Cr. L. J. 840 : 104 I. C. 456.

441. In *Fitzholmes v. R.*, (1925) 1 L. R. 7 Lah. 77, the District Judge on the 14th June, 1924, directed that a complaint be drawn up by the Public Prosecutor against the appellant and filed in Court. This complaint was presented to the Court of the District Magistrate early in April 1925, and was sent for trial to the Additional District Magistrate on the 8th April and on the same date an appeal under sec. 476-B was presented to the High Court, *i. e.*, the appeal before the High Court was from the order of the Sessions Judge dated the 14th June 1924 directing that a complaint be made against the appellant. It was admitted by the Counsel on both sides that the ordinary period of appeals to the High Court in such cases is two months (sixty days), but they differed as to the date from which the limitation should begin to run. The Public Prosecutor contended that the time should run from the 14th June 1924, when the District Judge directed that a complaint be filed against the applicant. The counsel for the appellant contended that time should run from the date of making of the complaint. The High Court accepted the contention of the appellant observing, "Section 476-B gives a right of appeal to a person against whom a *complaint has been made*, and if such person succeeds on appeal, the Appellate Court's order would be to direct *the withdrawal of the complaint*. This clearly contemplates that an appeal is to be filed *after* a complaint has actually been made and

not before. The law does not contemplate that any great interval should elapse between the passing of a formal order directing a complaint to be made and the actual making of the same, and, therefore, an appeal is allowed not from the finding of the Court that a complaint should be made but from the making of the complaint. This view is further supported by the wording of sec. 476, which provides that the Court after such preliminary inquiry, if any, as it thinks necessary, may record a finding to the effect that it is expedient in the interests of justice that inquiry should be made into any offence referred to in sec. 195 (1) (b) and (c) and make a complaint thereof in writing. The person against whom such a finding is recorded is affected by it only when a complaint in pursuance thereof has been made. In my opinion, time begins to run from the date on which the complaint is made." This case has been followed in *R. v. Daga Devji*, (1927) I L. R. 52 Bom. 164, and also in the case of *Ramjan Ali v. Moolji Sicca & Co.*, (1929) I L. R. 56 Cal. 932.

442. In the case of *R. v. Daga Devji*, (*supra*) Fawcett, J., said (p. 166), "In my opinion, an appeal in such a case is, in fact, one against the order of the Court directing a complaint to be made, for the petitioner, in appeal, will have to show that the reasons that the Court had for making a complaint and that are relied upon in its order, are erroneous. Under sec. 476, Cr. P. C., the Court making the complaint has to 'record a finding' that inquiry, etc., should be made; and this 'finding' clearly comes under the word, 'order' in Art. 154 of the Indian Limitation Act. Section 476-B gives the person affected a right of appeal from this order, but only after the complaint has been actually made. In the circumstances it seems to me that the case falls under Art. 154, the 'order' being the 'finding' under sec. 476, when completed or supplemented by an actual complaint. Till the order is so supplemented, it is for the purposes of section 476-B

Meaning of the words "finding" and "order".



incomplete, so that limitation only begins to run from the time that the complaint is actually made. \* \* \* \* The fact that an appellant may not know that a complaint has been filed

Application of  
sec. 5 of the Limita-  
tion Act.

of till after the thirty days prescribed by Article 154 have expired is immaterial, as the Appellate Court can excuse the delay under section 5 of the Indian Limitation Act, "(p. 167).

443. In *Gerimal v. Shewaram*, (1925) 27 Cr. L. J. 780,

Extension of time  
of limitation in  
favour of the appli-  
cant for prosecution.

the appellant asked the Civil Court to institute criminal proceeding against the respondent for the offence of giving false evidence etc. The application was rejected by the Civil Court and an appeal was filed by him beyond time, it was held that it is not proper to extend the time allowed for an appeal under sec. 476-B, even if the delay arises in consequence of any genuine mistake which could have been averted by a proper inquiry. Nor can such an appeal filed beyond time be treated as a revisional application and the revisional jurisdiction, so far as the Code of Criminal Procedure goes, be invoked.

But in the case of *Sheo Prasad v. Sheo Bans Rai*, (1926) 93 L. C. 851, the Allahabad High Court allowed a week within which to file an application under sec. 5 of the Limitation Act supported by an affidavit, on the ground that "as some misapprehension appears to have been existed on this point and the Counsel who presented the application states that he has himself been hitherto under the impression that limitation was ninety days." See *ante* ¶ 440, p. 319.

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## CHAPTER XVII.

### A trial under sec. 182 or 211, no bar to a prosecution for defamation.

444. An acquittal under sec. 182 in respect of false information contained in a petition to the manager of an estate is no bar to a subsequent prosecution for defamation under sec. 500 I. P. C., on the same statements. See *Ramsebak Lal v. Muneswar Singh*, (1910) I. L. R. 37 Cal. 604.

445. Section 403 Cr. P. C., is no bar as the two offences are different; one is an offence committed against a public servant, which can only be prosecuted upon the complaint of the public servant injured or by his superior officer. The offence under sec. 500, can only be prosecuted on the complaint of the person aggrieved by the defamation, (sec. 198 Cr. P. C.). In one case the offence is committed against the person to whom the false information is given; in the other case it is committed against a person about whom defamatory statement is made. The prosecution under sec. 500, I. P. C., is clearly saved by the express provision of sec. 403 (2) of the Criminal Procedure Code.

446. When an information or a complaint is found to be false and the facts alleged therein constitutes offences both under sec. 211 and sec. 500 I. P. C., and when the informant or the complainant, as the case may be, is charged and tried under both the sections at one trial and when he is convicted of one of such offences only, he cannot be charged and tried over again for the other.

In the case of *Ghamandi Nath v. Babu Lal*, (1929) I. L. R. 51 All. 977, Ghamandi Nath made a report to the Police that a burglary or dacoity had been committed at his house and that two men, Manni Lal and Babu Lal, were

standing at his door armed with a spear and a sword, directing the operations of the burglars or dacoits. The report was found to be false so far as Manni Lal and Babu Lal were concerned. Ghamandi Nath was thereupon tried for offences under secs. 211 and 500 I. P. C., on the complaint of Manni Lal and Babu Lal. Ghamandi Nath was convicted under sec. 500, I. P. C., only. Manni Lal applied in revision to the High Court for a sentence under sec. 211 also, but subsequently withdrew the application. Thereafter Babu Lal filed a complaint against Ghamandi Nath under sec. 211. The question arose whether Ghamandi Nath could be tried again under sec. 211 on the above facts and circumstances. The High Court said, "When this Court accepted the withdrawal by the complainant Manni Lal, it may be presumed that it gave its consent to such a withdrawal. In his application for revision Manni Lal had desired a sentence under sec. 211 of the Indian Penal Code, also, to be imposed; so his withdrawal of that application amounted to a withdrawal of the charge for that offence. The provisions of section 240, Cr. P. C., apply to every grade of Court, not only to the Court of trial. There is also another reason why the complaint to the Deputy Magistrate would conflict with the provisions of sec. 403, clauses (1) and (2), of the Code. Clause (1) deals with acquittals of offences covered by secs. 236 and 237. As to offences covered by sec. 235, clause (2) lays down: 'A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under sec. 235, sub-section (1).' Reading this in conjunction with the provisions of clause (1), it would follow that when a separate charge has been framed against a person under any of the sub-sections other than sub-section (1) of sec. 235 'he cannot be tried for the separate charge when he has once been convicted or acquitted of one charge. To the case of Ghamandi Nath sub-section (2) of sec. 235 would apply, because the acts alleged against him

of making a false report constitute an offence falling within two definitions of the Indian Penal Code, namely those of sec. 211 and sec. 500, he could be charged with them and tried at one trial for each of such offences. When he was convicted of one of such offences, namely an offence under sec. 500, he could not be tried over again for an offence under sec. 211 of the Indian Penal Code. This view is supported by a Bench ruling of the Calcutta High Court, *Sharbekhan v. R.*, (1905) 10 C. W. N. 518. There a person had been tried for offences under secs. 201 and 202 of the Indian Penal Code and acquitted by the Sessions Court. When he was tried again for an offence under sec. 176 based on the same facts, the High Court held that he could not be so prosecuted as the case did not fall under sub-section <sup>1</sup>(1) of sec. 235 of the Criminal Procedure Code but under sub-section (2) of that section." Accordingly the High Court quashed the proceedings against Ghamandi Lal and dismissed the complaint of Babu Lal.

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THE END.



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